

United States
Circuit Court of Appeals

For the Ninth Circuit. 2

WEST COAST LIFE INSURANCE COMPANY,
a corporation, PACIFIC NATIONAL BANK
OF SAN FRANCISCO, a national banking
association, et al.,

Appellants,

vs.

MERCED IRRIGATION DISTRICT and RE-
CONSTRUCTION FINANCE CORPORATION,

Appellees.

Transcript of Record

In Four Volumes

VOLUME II

Pages 267 to 554

Upon Appeal from the District Court of the United
States for the Southern District of California
Northern Division.

FILED

SEP 15 1939

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Upon Appeal from the District Court of the United
States for the Southern District of California
Northern Division.

At a stated term, to wit: The October Term, A. D. 1938, of the District Court of the United States of America, for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 28th day of March in the year of our Lord one thousand nine hundred and thirty-nine Present:

The Honorable Paul J. McCormick, District Judge.

[Title of Cause.]

The motion for a new trial of Claire S. Strauss, Florence Moore, et al., Minnie Rigby and Richard tum Suden, as executors of the estate of Wm. A. Lieber, Pacific National Bank of San Francisco, West Coast Life Insurance Company, Milo W. Bekins, et al., and R. D. Crowell and Belle Crowell, respondents and objectors, having been duly considered, together with all affidavits and exhibits in support thereof, and upon re-examination of the entire record in this proceeding.

It is now ordered that said motion for new trial be, and the same is hereby denied in toto. Exceptions noted and allowed to each movant severally and to all movants collectively. [234]

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR
NEW TRIAL.

The motion for new trial of Claire S. Strauss; Florence Moore, et al.; Minnie Rigby and Richard tum Suden, as executors of the estate of Wm. A. Lieber; Pacific National Bank of San Francisco; West Coast Life Insurance Company; Milo W. Bekins, et al.; and R. D. Crowell and Belle Crowell, respondents and objectors, having been duly considered, together with all affidavits and exhibits in support thereof, and upon re-examination of the entire record in this proceeding. It Is Now Ordered that said motion for new trial be and the same is hereby denied in toto. Exceptions noted and allowed to each movant severally and to all movants collectively.

Dated this March 28, 1939.

PAUL J. McCORMICK,
United States District Judge.

[Endorsed]: Filed Mar. 28, 1939. [235]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT (UNDER RULE 73).

Notice is hereby given that West Coast Life Insurance Company, a corporation; Pacific Na-

tional Bank of San Francisco, a national banking association; Mary E. Morris, R. D. Crowell; Belle Crowell; Claire S. Strauss; Minnie E. Rigby as Executrix, and Richard tum Suden as Executor, of the Last Will of William A. Lieber, Alias, Deceased; Florence Moore; American Trust Company as trustee under a certain agreement between R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; [236] Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante

Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell, creditors of Merced Irrigation District and respondents in this cause hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the Interlocutory Decree entered in this action on February 21, 1939, the same being the Interlocutory Decree entered after the hearing upon the plan of composition and from the whole thereof.

Dated: March 28th, 1939.

CHAS. L. CHILDERS,

Attorney for West Coast Life Insurance Company.

HUGH McKEVITT,

Attorney for Pacific National Bank of San Francisco. [237]

CLARK, NICHOLS & ELTSE

By GEORGE CLARK,

Attorneys for Mary E. Morris.

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE,

Attorneys for R. D. Crowell and
Belle Crowell.

DAVID FREIDENRICH,

Attorney for Claire S. Strauss.

PETER TUM SUDEN,

Attorney for Minnie E. Rigby as
Executrix, and Richard tum Su-
den as Executor, of the Last Will
of William A. Lieber, Alias, De-
ceased.

BROBECK, PHLEGER & HARRI-
SON,

By EVAN HAYNES,

Attorneys for Florence Moore;
American Trust Company as
trustee under a certain agreement
between R. S. Moore and Ameri-
can Trust Company dated Decem-
ber 15, 1927; Crocker First Na-
tional Bank as trustee under a
certain agreement between Flor-
ence Moore and Crocker First
Federal Trust Company, dated
December 15, 1937.

W. COBURN COOK,

Attorney for Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins; deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy; H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; [238] D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J.

Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. pointed by the Will of Martin Fine; Mrs. J. H. Fine, F. F. G. Harper; and W. S. Jewell.

(Copies mailed to Stephen H. Downey, C. Ray Robinson, Hugh Landram, Attorneys for Debtor & to Reconstruction Finance Corp. 3/30/39 E.L.S.)

[Endorsed]: Notice of Appeal. Filed Mar. 29, 1939. [239]

[Title of District Court and Cause.]

PETITION FOR ORDER ALLOWING
APPEAL.

To the above entitled Court and the Honorable Judges thereof:

Whereas, West Coast Life Insurance Company, a corporation; Pacific National Bank of San Francisco, a national banking association; Mary E. Morris; R. D. Crowell; Belle Crowell; Claire S. Strauss; Minnie E. Rigby as Executrix, and Richard tum Suden as Executor, of the Last Will of William A. Lieber, Alias, Deceased; Florence Moore; American Trust Company as trustee under a certain agreement between R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell [240] Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg, Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J.

C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell, respondents and objecting creditors in the above entitled proceeding consider themselves aggrieved by the order and interlocutory decree of the above entitled Court rendered in the above entitled proceeding which decree is entitled "Interlocutory Decree" and is dated the 21st day of February, 1939, and is signed by the Honorable Paul J. Mc-

Cormick, for the reasons and because of the errors set out in the Assignment of Errors presented and filed with this petition.

Now Therefore, the said respondents and objecting creditors do hereby appeal from the aforesaid order and decree to the United States Circuit Court of Appeals for the Ninth Circuit upon all of the grounds and for the reasons specified in the assignment of errors filed herewith and pray that said appeal may be allowed [241] and that a citation in due form shall be issued herein directed to the petitioner, Merced Irrigation District in the above entitled proceeding commanding it to appear before the said Circuit Court of Appeals to do what may be adjudged to be done in the premises, and that a transcript of the record, proceedings, and papers upon which order and decree was made shall be duly made and authenticated and sent to the aforesaid Circuit Court of Appeals, and that such other and further order may be made as may be proper.

Dated:

CHAS. L. CHILDERS,

Attorney for West Coast Life Insurance Company.

HUGH McKEVITT,

Attorney for Pacific National Bank of San Francisco.

CLARK, NICHOLS & ELTSE,

By GEORGE CLARK,

Attorneys for Mary E. Morris.

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE,

Attorneys for R. D. Crowell and
Belle Crowell.

DAVID FREIDENRICH,

Attorney for Claire S. Strauss.

PETER TUM SUDEN,

Attorney for Minnie E. Rigby as
Executrix, and Richard tum Suden
as Executor, of the Last Will of
William A. Lieber, Alias, De-
ceased.

BROBECK, PHLEGER & HARRI-
SON,

By EVAN HAYNES,

Attorneys for Florence Moore;
American Trust Company as
trustee [242] under a certain
agreement between R. S. Moore
and American Trust Company
dated December 15, 1927; Crocker
First National Bank, as trustee
under a certain agreement between
Florence Moore and Crocker First
Federal Trust Company, dated
December 15, 1937.

W. COBURN COOK,

Attorney for Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth Jr. George N. Keyston George W. Pracy; H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen N. Chapman; Edith O. Evans; J. Ofelth; Dante

Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie, R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; C. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell,
Attorneys for Appellants.

[Endorsed]: Petition for Order Allowing Appeal.
Filed Mar. 30, 1939. [243]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL.

In the above entitled case (mentioned in the petition to which this order is attached), it is ordered that the appeal therein prayed for be and the same is hereby allowed, and the Court hereby fixes the amount of the cost bond to be given by the appellants, the respondents named in said petition, in the sum of \$250.00, and it is further ordered that the costs bond in said amount heretofore filed by respondents shall be deemed compliance with this order.

Dated: March 30th, 1939.

PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Order Allowing Appeal. Filed Mar. 30, 1939. [244]

[Title of District Court and Cause.]

ORDER FIXING BOND.

It appearing that West Coast Life Insurance Company, a corporation, et al., appellants, have filed herein their Notice of Appeal to the Circuit Court of Appeals for the Ninth Circuit (Under Rule 73), and good cause appearing therefor.

It Is Ordered that the bond of said appellants on appeal herein be fixed at \$250.00.

Dated: March 29, 1939.

PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Order Fixing Bond. Filed Mar. 29, 1939. [245]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS.

The appellants West Coast Life Insurance Company, a corporation; Pacific National Bank of San Francisco, a national banking association; Mary E. Morris; R. D. Crowell; Belle Crowell; Claire S. Strauss; Minnie E. Rigby as Executrix, and Richard tum Suden as Executor, of the Last Will of William A. Lieber, Alias, Deceased; Florence Moore; American Trust Company as trustee under a certain agreement between R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, Deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Katherine Bekins, Deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B.

Cates; Nancy Bagg Eastman; Charles [246] C. Bagg; Horace B. Gates; Barker T. Gates; Mary Edna Gates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; C. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell in connection with their petition for an order allowing an appeal, make

the following assignment of errors, which they aver occurred at the trial and determination of this proceeding and in the rendering of the decree appealed from:

1. Chapter IX of the Bankruptcy Act of the United States is unconstitutional and void and affects the property interests of the appellants in that it violates Article I, Section 10, Clause 1, of the Constitution of the United States and the Fifth, Tenth and Fourteenth amendments to the Constitution of the United States.

2. The State of California has not consented and cannot consent to these proceedings. [247]

3. The trial court had no jurisdiction of the cause nor of the parties.

4. The cause is *res judicata*.

5. The proceedings herein were and are barred by proceedings pending in the Superior Court of the State of California under the provisions of Statutes of California 1937, Chapter 24.

6. The State of California has otherwise provided for the control and exercise of the political and governmental powers of Merced Irrigation District through the enactment of the California Irrigation Districts Act, the District Securities Commission Act, and Statute of California, 1937, Chapter 24.

7. The Interlocutory Decree in this cause interferes with the political and governmental powers of

the Merced Irrigation District and the property and revenues thereof necessarily essential for governmental purposes.

8. By the provisions of Section 83 of the Bankruptcy Act the court is without power to apply its order to this irrigation district.

9. The plan of composition herein is unfair, inequitable, and unjust and is not for the best interests of the creditors and it discriminates unfairly in favor of the Reconstruction Finance Corporation.

10. The plan does not comply with the provisions of Chapter IX of the Bankruptcy Act of the United States.

11. The plan of composition has not been accepted and approved as required by the provisions of Subdivision (d) of Section 83 of the Bankruptcy Act.

12. The offer of the plan and its acceptance are not in good faith. [248]

13. The Merced Irrigation District is not authorized by law to take all action necessary to be taken to carry out the plan of composition.

14. The Merced Irrigation District, at the time of the filing of its petition was not and is not insolvent, nor unable to pay its debts as they mature.

15. 51% of the amount of securities effected by the plan, excluding any such securities owned, held, or controlled by the petitioner, had not accepted the plan of composition herein in writing or otherwise

at the time of the filing of the petition herein, nor since.

16. The court erred in making and entering its Findings of Fact and Conclusions of Law herein, and in entering the Interlocutory Decree.

17. The evidence adduced at the hearing was insufficient to sustain the petition.

18. The State of California could not, by its consent to the proceedings, bind non-residents of the State of California.

19. The court erred in classifying the creditors, including the Reconstruction Finance Corporation, as one class.

20. The court erred in finding and holding that the Reconstruction Finance Corporation is a creditor effected by the plan.

21. The court erred in finding and holding that the Reconstruction Finance Corporation is the owner or holder of the original bond issues of the Merced Irrigation District entitled to vote on the plan of composition herein.

22. The court erred in entering a decree herein taking vested rights of the appellants.

23. The court erred in taking jurisdiction of the public [249] trust imposed upon the Merced Irrigation District under the California Irrigation District Act and in administering the same and in depriving the appellants of their rights as beneficiaries of such trusts.

24. The court erred in finding and holding that two-thirds of the aggregate amount of claims of all classes, affected by the plan of composition herein, and which have been admitted by the petitioner, or allowed by the Judge, but excluding claims owned, held, or controlled by the petitioner, have accepted the plan of composition in writing.

25. The court erred in approving and confirming the plan of composition mentioned in the interlocutory decree.

26. The court erred in overruling objections of appellants to the jurisdiction of the court and to the introduction of evidence under the petition.

27. The court erred in finding that none of the matters alleged in the present petition is *res judicata*, and in finding that this court had power and jurisdiction to consider and adjudicate all of the matters in this proceeding.

28. The court erred in approving and allowing the claim of Reconstruction Finance Corporation.

29. The court erred in finding that said plan of composition does not discriminate unfairly in favor of Reconstruction Finance Corporation.

30. The court erred in finding that said plan was not prepared or substantially completed or executed several years before the commencement of this proceeding, and in finding that said plan is a plan of composition pursuant to said Chapter IX.

31. The court erred in holding that all of the

bonds and indebtedness included in the plan of composition are of one and the [250] same class, and are payable without preference.

32. The court erred in holding that every bondholder should deposit any and all bonds and coupons issued or assumed by petitioner, with the disbursing agent within thirty days after publication of certain notice, or be forever barred from claiming or asserting, as against petitioner or any individually owned property located within petitioner or the owners thereof, any claim or lien arising out of said bonds or coupons.

33. The court erred in enjoining and restraining appellants from commencing or prosecuting any suits, actions, or proceedings as to any indebtedness included in the plan of composition.

34. The court erred in holding that petitioner is unable to meet its obligations as they mature, and in holding that adverse agricultural conditions have affected petitioner, and in holding that petitioner has in good faith levied taxes to pay its bonded indebtedness, and that said taxes were greater than the ability of the land to produce or of farmers to pay, and in holding that petitioner was, or is or will continue to be unable to collect sufficient revenue to meet its obligations or a greater amount of revenue than will carry out the plan of composition.

35. The court erred in finding and ruling that said district is unable to meet its debts as they

mature within the true meaning of said terms. The district is practically without leviable property and inability to meet debts has reference to property and not yield from the unlimited and sovereign power of the state or of one of its districts to tax private property.

36. The court erred in finding said plan of composition fair in that it contains no provision for subsequent compensation for the impairing of obligations of the bondholders involved in this case in the event the district is subsequently able to pay its in- [251] debtedness in full through taxation or otherwise.

37. The court erred in finding said plan of composition fair in that it allows said debtor district to retain its water rights, reservoirs, power production facilities, lands, canals, and water systems and other property, which properties were produced by moneys furnished by the bondholders of the district and the plan of composition was in no manner based upon any valuation of said properties.

38. The court erred in finding said plan fair in that it compels no surrender of any property of said district and it wholly fails to measure the new obligations of said district to pay by any valuation of any assets or property of said district.

39. The court erred in not holding that under the terms of California Statutes of 1937, Chapter 24, Section 19, said Reconstruction Finance Cor-

poration and petitioner were bound by said plan of composition prior to the commencement of this proceeding and thereby said corporation is not affected by the plan referred to in this proceeding.

40. The court erred in holding that petitioner and its obligations are subject and amenable to the bankruptcy power of the Congress of the United States, and in holding that the State of California has consented and can consent to this proceeding, and in not holding that any purported consent of the State of California to this proceeding under the terms and provisions of California Statutes of 1934 (Extra Session) Chapter 4 is unconstitutional and void in that said Chapter violates the provisions of Article I, Section 16; Article IV, Section 1; Article X, Section 5; and Article XIII, Section 6 of the Constitution of the State of California, and Article I, Section 10, Clause 1 of the Constitution of the United States, and other constitutional provisions. [252]

41. The court erred in not holding that said Chapter IX (formerly Chapter X) of the Bankruptcy Act was and is unconstitutional and that it did not violate the following sections and clauses of the Constitution of the United States: Article I, Section 10, Clause 1, and the Fifth and Tenth Amendments.

42. The court erred in not holding the plan unconstitutional because it interferes with sovereign governmental and political powers of the State of

California, and in particular interferes with the power of taxation.

43. The court erred in not holding that said Chapter IX is not a bankruptcy act which Congress could make applicable to Merced Irrigation District.

44. The court erred in not holding that Merced Irrigation District is a political subdivision created for the purpose of exercising and exercising powers of sovereignty conferred upon said district by the laws of the State of California to carry out public governmental purposes, and it erred in holding that the confirmation of said plan of debt readjustment was not a void and illegal interference with the exercise of said sovereign powers so conferred upon said district.

45. The court erred in not holding that the power of Merced Irrigation District to levy taxes on the lands or property of private individuals is not property within the meaning of a true bankruptcy law.

46. The court erred in approving and confirming the plan of composition without provisions for appellants' vested rights in trust funds and properties, including proceeds of assessments, tax certificates, land to which title has been taken under tax sales and proceeds thereof, the right to levying of annual assessments both in the past and future, and moneys impounded by writ or writs of manda-

mus heretofore issued and the district's power revenues. [253]

47. The court erred in approving the said plan in that appellants' right of assessments against the personal property of landowners was not taken into consideration nor provided for.

48. The court erred in not holding that the plan of composition violates the Fifth amendment of the Constitution of the United States in that mortgages and other obligations, junior to those held by appellants, of petitioner, and petitioner's landowners may be paid in full while appellants are to receive only a portion of the principal of their holdings.

49. The plan further violates the Fifth amendment of the Constitution of the United States by taking appellants' property and giving it to the landowners of petitioner's district.

50. The plan takes the private property of appellants to pay the public debt of the State of California, and of the Merced Irrigation District without just compensation.

51. The court erred in determining that by these proceedings the obligation of the State of California upon the securities affected by the plan could be voided.

52. The court erred in making its conclusions of law as to all the matters mentioned in the within assignment of errors.

53. The court erred in finding and holding that the Reconstruction Finance Corporation is a bond-

holder in the principal amount of \$14,702.00, and accumulated interest on such outstanding bonds or upon any other amount of bonds.

54. The court erred in holding that sub-paragraph (j) of Section 83 of the Bankruptcy Act of the United States in any way applies to the consent of the Reconstruction Finance Corporation or to these proceedings.

55. The court erred in holding that the Reconstruction Finance Corporation had the power under Section 403, Title 43 of U.S.C. to purchase or acquire the original bonds of the Merced [254] Irrigation District.

56. The court erred in holding that it was a governmental purpose of Congress in enacting Chapter IX of the Bankruptcy Act to in any way affect the intention or purpose of the Reconstruction Finance Corporation in making a loan under the provisions of Section 36 of the Federal Farm Mortgage Act.

57. The court erred in finding and holding that equity requires that in any composition under the Bankruptcy Act, that all the bondholders should be considered as of equality and dealt with on a parity.

58. The court erred in finding and holding that the fact that ninety per cent of the original bondholders accepted the plan of composition many months prior to the enactment of Chapter IX is irrefutable evidence or any substantial evidence of the fairness of the plan, or in holding that the

acceptance by the Reconstruction Finance Corporation of the plan is any evidence of the fairness thereof.

59. The court erred in holding that when a California irrigation district is insolvent, its bonded debt is no longer payable under the provisions of Section 52 of the California Irrigation District Act, but that payment is to be made pro rata upon unmatured as well as matured bonds and obligations and in disregard of the order of presentation for payment to the reasurer of the district.

60. The court erred in holding that the court, as a court of bankruptcy, is powerless to surrender its control of the administration of the estate of the Merced Irrigation District.

61. The court erred in holding that the lien claims and rights of the bondholders holding securities of overlapping taxing agencies are entirely dissimilar to the bonds of the Merced Irriga- [255] tion District affected by these proceedings.

62. The court erred in holding that the bonds and coupons affected by the proceedings are all of one class and not affected by the order in which the matured obligations may have been presented to the treasurer of the district under the provisions of Section 52 of the California Irrigation District Act.

63. The court erred in not especially finding upon all and each and every of the defenses raised by the respondent bondholders.

64. The court erred in finding that it was fair and equitable to provide interest bearing bonds for the liquidation of the claim, if any, of the Reconstruction Finance Corporation, but to require the respondents to accept cash.

65. The court erred in finding and holding that it was fair to pay depositing bondholders interest upon their claims and not to pay similar amounts of interest to the respondents.

66. The court erred in holding and determining that it was fair and equitable to pay interest at 4% to the Reconstruction Finance Corporation during all of the months and years since the plan has been in effect, and not to pay the same amount of interest to the respondent bondholders.

67. The court erred in confirming a plan which discriminated in favor of the Reconstruction Finance Corporation and the depositing bondholders and against the respondents.

68. The court erred in confirming a plan which was based upon misappropriation of trust funds and permitted the conversion and deviation of trust funds from their proper channels to the injury and loss of the respondents.

69. The court erred in not granting the motion of respondents to classify the Reconstruction Finance Corporation's claims separately and as claims not affected by the plan [256]

70. The Court erred in exercising or attempting to exercise jurisdiction in acting upon and in con-

firming the petitioner's plan of composition. The court had no jurisdiction of the subject matter of this proceeding.

71. The Court erred in finding against the plea of *res judicata*.

72. The Court erred in failing to find that petitioner was barred from prosecuting this proceeding or from obtaining the relief sought by the petitioner herein.

73. The Court erred in failing to find that the plan of composition set out in the petition in this case was substantially the same as the plan set out in the petition of the petitioner herein in that certain other proceeding which is referred to in Finding VII.

74. The Court erred in failing to find that the parties to this proceeding and the parties to said other proceeding were the same.

75. The Court erred in failing to find that the non-assenting bondholders, the objectors in this particular case to the enforcement of the plan of debt composition, were the same creditors whose debts were sought to be readjusted by the petition in said other proceeding.

76. The Court erred in failing to find that in said other proceeding the final decree of the trial court undertook to and did, in form, readjust the obligations of the petitioner represented by the bonds held by the dissenting bondholders appearing

in this case in substantially the same way in which the petition in this case sought to have the said obligations readjusted.

77. The Court erred in failing to find that the non-assenting bondholders who appeared in this case in opposition to this proceeding pleaded and presented to the Court in said other proceeding the same claims and demands which they pleaded and presented [257] to the Court in this proceeding, to-wit, the claims and demands based upon bonds of the petitioner held respectively by the same non-assenting bondholders in both proceedings.

78. The Court erred in failing to find that the issues in both proceedings were in substance the same and that the Court in said prior proceeding undertook to and did find the same facts which the petition in this case sought to have the Court find.

79. The Court erred in failing to find that the pleadings of the non-assenting bondholders, who were identical in both proceedings, did in said prior proceeding particularly challenge the jurisdiction of the trial court to proceed therein.

80. The Court erred in failing to find that the non-assenting bondholders in this particular proceeding did each and all object in said other proceeding and on the trial thereof to the jurisdiction of the trial court over the subject matter of the proceeding or over the non-assenting bondholders, which said non-assenting bondholders included all

of the non-assenting bondholders and claimants in this case whose bonds are being impaired.

81. The Court erred in failing to find that all objections to jurisdiction upon the ground that said Section 80 is unconstitutional were overruled by the trial court in said prior proceeding and that exceptions were duly reserved by and on behalf of all of said non-assenting bondholders.

82. The Court erred in failing to find that those powers which were conferred upon the trial court by what is known as Section 83 of the Federal Bankruptcy Act are the same as the powers which Congress undertook to confer upon the said Court under Section 80 of said Act and that the appeal taken in said other proceeding by the non-assenting bondholders was in part upon the ground that the granting of the powers referred to was in excess of the power of Congress and could confer no jurisdiction upon the said trial court. [258]

83. The Court erred in failing to find that the decree dated April 12, 1937, which is referred to in the aforesaid finding, was based directly upon and did determine that the grant of powers to readjust the indebtedness referred to, which powers the said trial court undertook to exercise, was in excess of the power of Congress and that this had been determined in the case of *Ashton et al. v. Cameron County Water Improvement District No. 1*, 298, U. S. 513.

84. The Court erred in failing to find that it was, by virtue of the said decree of the said United States Circuit Court of Appeals, finally and forever determined as between the petitioner herein and each and all of the dissenting bondholders, appellants herein, that the grant of powers contained in Section 83 of the Federal Bankruptcy Act, under which section this proceeding was begun and prosecuted, was unconstitutional and beyond the power of Congress to make, and that the trial court could not in reliance upon an identical grant of powers undertake to do substantially the same thing in the matter of readjusting the indebtedness represented by the bonds held by the dissenting bondholders as was attempted to be done in said prior proceeding.

85. The Court erred in failing to find that the decree entered by the trial court on the going down of the mandate following the making of said decree by said United States Circuit Court of Appeals was not a final adjudication and bar in favor of the dissenting bondholders to the same extent and in the same manner in which the said decree of the said United States Circuit Court of Appeals constituted an adjudication and bar against the petitioner.

86. The Court erred in failing to find that the decree last named became non-appealable and final because it was entered pursuant to the mandate of said United States Circuit Court of Appeals.

87. The Court erred in failing to find that the decree of said United States Circuit Court of Appeals was final. [259]

88. The Court erred in failing to find that the decree entered upon said mandate was final.

89. The Court erred in failing to find that the petitioner herein was estopped, by virtue of the proceedings referred to in the preceding assignment and by virtue of the proceedings which are referred to in Finding VII of the Court, from asserting that the trial court did in this proceeding have the power to make any of the findings which subdivision (e) of Section 83 of the Federal Bankruptcy Act required it to find as a condition of its confirming or approving the petitioner's plan of debt readjustment.

90. The Court erred in failing to find that the particular issue as to the validity of the powers referred to in said subdivision (e) and the right of the trial court to exercise said powers were involved and were necessarily involved in the trial of said prior proceeding, and said issue was determined in favor of the dissenting bondholders in this case.

91. The Court erred in failing to find that the issues and the parties in the two proceedings were the same and that the subject matter or res in the two proceedings was the same and that the Court could not have been required to dismiss said other proceedings by the judgment of the Circuit Court of

Appeal without a determination that there was no right in the petitioner district to have the debts involved in this case readjusted under alleged bankruptcy power of the kind attempted to be exercised in this case or under any type of bankruptcy power.

92. The Court erred in failing to find that the attempted exercise of power involved in this proceeding was the same as that involved in the prior proceeding and that it had been finally adjudicated in favor of the dissenting bondholders that the obligations represented by their bonds could not be impaired or changed by the exercise of any so-called Federal Bankruptcy power or by the exercise of the particular powers mentioned in Section 83 of the Federal [260] Bankruptcy Act.

93. The Court erred in failing to find that petitioner district was not bankrupt.

94. The Court erred in failing to find that the bonds held by the Reconstruction Finance Corporation were owned by the district and not by said corporation.

95. The Court erred in failing to find that said bonds were paid for in part by cash provided by the district.

96. The Court erred in failing to find that said corporation knew that the district, a California public agency, provided a part of the money which constituted a consideration for the bonds held by said corporation.

97. The Court erred in failing to find that said district had no authority to make a contract which would vest title to any of its bonds in said corporation.

98. The Court erred in failing to find that the district's plan of debt readjustment was discriminatory and unfair in that—

(a) The plan contains no provision for paying any interest as compensation for delay in the period between the actual adoption of the present plan and the times of payment to the bondholders of the district who accepted the district's plan.

(b) The district has been continuously paying interest to said Reconstruction Finance Corporation on the loan made by said corporation to the district and at the rate of 4% per annum and said loan obligation is not materially different from the obligations represented by the district's bonds. Said payments have been made for over two years and no corresponding payment has been made upon the bonds of any of the dissenting bondholders, and the said district has been and is preferring said corporation.

(c) The district paid its warrant indebtedness and its other liquidated indebtedness in full. Said indebtedness [261] existed when the district adopted its plan. It was of the same character as bonded indebtedness.

(d) The said plan does not take into consideration the obligations of overlapping governmental

subdivisions, which obligations consist of bonded indebtedness and other liquidated demands, all payable through taxation in substantially the same way and from substantially the same source as the irrigation district bonds are paid. The plan does not propose in any way to alter such other obligations, and by virtue of casting the whole sacrifice upon the district's bondholders, said other obligations have been brought back to par although they were as badly in default as were the district's bonds.

(e) The lands within the district have been and are in a large part subject to mortgages and deeds of trust securing private loans. The plan contains no provision for calling upon these private money lenders for any sacrifice whatever.

(f) The district misappropriated thousands of dollars by taking the same from its bond funds and using the same for private purposes. This was done after the district became in default. These funds were payable under the law upon the bonds held by the dissenting bondholders, principally on account of interest. The plan does not call for the restoration of this misappropriated money.

(g) The plan seeks to enforce a settlement upon a basis that was not inflicted upon those who accepted the plan. Those who accepted the plan were paid approximately 50-cents on the dollar of the principal of their demands together also with interest on said amount at 4% per annum. The period

of payment was from the time of acceptance of the plan by a bondholder to the time of the payment of the agreed amount on account of principal. These payments were all made before the re-adoption of the plan, about two years ago. The appellants are paid nothing for delay.

(h) The district misappropriated approximately \$400,000.00 from the bond fund, which money belonged to the dissenting [262] bondholders, and it used this money in the acquisition of the bonds claimed to be held by the Reconstruction Finance Corporation, and said corporation knew of the said misappropriation and use of funds. The plan accords the appellants no interest in said bonds.

99. The Court erred in holding that the district's plan had been accepted in writing by the holders of as much as two-thirds in amount of the district's bonded indebtedness or of as much as two-thirds in principal amount of each class of indebtedness affected by the district's plan.

100. The Court erred in holding that the Reconstruction Finance Corporation was a creditor qualified to give a consent which would authorize the Court to proceed to enforce the district's plan as against the dissenting bondholders who are the appellants in this proceeding.

101. The Court erred in holding that the so-called Enabling Act adopted by the legislature of the State of California on September 20, 1934, con-

stituted a sufficient consent on the part of the State of California to this particular proceeding on behalf of one of its governmental agencies.

102. The Court erred in holding that the petitioner was authorized to institute this proceeding.

103. The Court erred in holding that the petition herein stated facts sufficient to constitute a cause for any relief.

104. The Court erred in holding that the district had ever been authorized by its board of directors to prosecute this proceeding.

105. The Court erred in holding that the district's plan for borrowing money with which to pay its bonds had been voted upon and adopted at an election held within said district. It distinctly appeared that the loan contract, which the district claims will constitute a basis or means whereby it will provide funds to complete its plan, was never authorized as provided in either Section 11 or [263] Section 3 of the act adopted by the legislature of the State of California on May 5, 1917 (Cal. Stats. 1917, p. 243) or the amendments to said act adopted in 1933 (Cal. Stats. 1933, p. 2394) or in 1935 (Cal. Stats. 1935, p. 1741.)

106. The Court erred in failing to find that the district was not authorized to borrow any funds with which to complete its plan.

107. The Court erred in failing to find that the district's plan impairs the obligations of the district's contracts as represented by the bonds and

coupons held by the dissenting bondholders, all in violation of Section 16, Art. I of the State Constitution and Subdivision 1, Section 10, Art. I of the Federal Constitution, the references being to the contract clauses of said constitutions.

108. The Court erred in holding that said Section 83 of the Federal Bankruptcy Act was not violative of the 5th Amendment to the Federal Constitution in that it provides for the taking of the bonds of the dissenting bondholders without due process of law and, without compensation.

109. The Court erred in holding that the proceeding devised by the State Enabling Act and Section 83 was a judicial proceeding.

110. The Court erred in holding that the District in this case gave the consent to the court's decree which was necessary to make said decree a finality for the purpose of appeal.

111. The Court erred in failing to find that Merced Irrigation District paid, and was able to pay, all of the matured bonds and all interest on its original bond issue, so long as the said Merced Irrigation District levied taxes for the payment thereof, and that no default occurred until the said petitioner, Merced Irrigation District, refused to levy taxes for the payment of such matured bond principal and interest in the fiscal year 1932-1933.

112. The Court erred in failing to find that the Merced Irrigation District unlawfully and in bad faith diverted \$717,932.50 from its bond fund to its

general operating fund, and never returned [264] such money to its bond fund, and at the time or trial herein declined so to do.

113. The Court erred in failing to find that the petitioner has, since 1932, placed every obstacle possible in the way of collection of moneys due to the bondholders, including:

(a) Its refusal to levy taxes for the payment of matured bonds and coupons, taking advantage of the "District Securities Act" which it sponsored;

(b) Its diversion of over \$700,000.00 from the bond fund to the operating fund of said district;

(c) The use of over \$400,000.00 of district funds in efforts to force the bondholders to accept large reductions on the amounts owed them;

(d) The institution of proceedings in the United States District Court, under Section 80 of the Bankruptcy Act;

(e) Instituting proceedings under the so-called Downey Act, sponsored by petitioner, in which the creditors of said district were enjoined, and in the continuation of said proceedings to date;

(f) The institution of the proceedings herein, in bad faith, for the sole purpose of profiting at the expense of the creditors of the district;

(g) In the proceedings herein and prior hereto, in misrepresenting the financial condition of the said district, and in presenting a false balance sheet as the basis for the proceedings, in that it over-

stated the liabilities of the district by \$1,509,000.00, and understated the assets by at least \$340,000.00.

114. The Court erred in not finding that, as applied to the petition herein, Section 83 of the Bankruptcy Act is unconstitutional.

115. The Court erred in refusing to adopt the additional findings proposed by the respondents.

116. The Court erred in refusing to grant a motion for a new trial. [265]

Wherefore, appellants pray that the decree of the district court appealed from shall be reversed.

Dated: March 28, 1939.

CHAS. L. CHILDERS,

Attorney for West Coast Life Insurance Company.

HUGH McKEVITT,

Attorney for Pacific National Bank of San Francisco.

CLARK, NICHOLS & ELTSE,

By GEORGE CLARK,

Attorneys for Mary E. Morris.

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE,

Attorneys for R. D. Crowell and Belle Crowell.

DAVID FREIDENRICH,

Attorney for Claire S. Strauss.

PETER TUM SUDEN,

Attorney for Minnie E. Rigby as
Executrix, and Richard tum Suden
as Executor of the Last Will of
William A. Lieber, Alias, De-
ceased.

BROBECK, PHLEGER & HARRI-
SON,

By EVAN HAYNES,

Attorneys for Florence Moore, et
al.

W. COBURN COOK,

Attorney for Milo W. Bekins and
Reed J. Bekins as trustees ap-
pointed by the Will of Martin Be-
kins, deceased; et al.

Attorneys for Appellants.

[Endorsed]: Assignment of Errors. Filed Mar.
30, 1939. [266]

[EMBLEM]

American Surety Company of New York
Capital \$5,000,000.

BOND FOR COSTS ON APPEAL.

Know All Men By These Presents: That we,
West Coast Life Insurance Company, a corpora-
tion, et al., Appellants named in the Notice of
Appeal to the Circuit Court of Appeals for the

Ninth Circuit (Under Rule 73), dated March 28th, 1939, as Principals, and the American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, and authorized to transact business in the State of California, as Surety, are held and firmly bound unto Merced Irrigation District, and to the United States of America, and to the Clerk of said Court, in the full and just sum of Two Hundred Fifty & 00/100 Dollars (\$250.00), to be paid to them and/or to each and/or to all or any of them and his or their respective successors, if any, as their respective rights may appear, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of March, 1939.

Whereas, the above-named Principals have or are about to file a Notice of Appeal, and to take an appeal in said matter from the Interlocutory Decree, entered in this action on February 21, 1939, the same being the Interlocutory Decree entered after the hearing upon the plan of composition, and from the whole thereof to the Circuit Court of Appeals for the Ninth Circuit and file herewith their said Notice of Appeal.

Now, Therefore, the condition of the above obligation is such, that if the said Principals shall prosecute their said appeal to effect and answer all

costs, if they shall fail to make their plea good, then this obligation to be void; otherwise to remain in full force and effect. [267]

It is further stipulated as a part of the foregoing bond, that in case of the breach of any condition thereof, the above named District Court may, upon notice to the Surety, above-named, proceed summarily in said action or suit to ascertain the amount which said Surety is bound to pay on account of such breach, and render judgment therefor against said surety and award execution therefor.

GEO. F. COVELL,
GILBERT MOODY,

Appellants on their own behalf
and on behalf of West Coast Life
Insurance Company, a corporation,
et al., Appellants named in Notice
of Appeal to the Circuit Court of
Appeals for the Ninth Circuit
(Under Rule 73), dated March
28, 1939, as Principals.

AMERICAN SURETY COMPANY
OF NEW YORK,

By L. T. PLATT,
Resident Vice President.

Attest:

B. DUCRAY,
Resident Asst. Secretary.

Bond #413538-K

Premium \$10.00 per annum. [269]

State of California

City and County of San Francisco—ss.

On this 17th day of March in the year one thousand nine hundred and thirty-nine before me Thomas A. Dougherty a Notary Public in and for said City and County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared L. T. Platt and B. Ducray known to me to be the Resident Vice-President and Resident Assistant Secretary respectively of the American Surety Company of New York the corporation described in and that executed the within and foregoing instrument, and known to me to be the persons who executed the said instrument on behalf of the said corporation, and they both duly acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the said City and County of San Francisco, the day and year in this certificate first above written.

[Seal] THOMAS A. DOUGHERTY,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires August 4, 1939.

[Endorsed]: Filed Mar. 29, 1939. [268]

[Title of District Court and Cause.]

PRAECIPE.

To the Clerk of the Above Entitled Court:

Please prepare in the above entitled cause a transcript of the record to be transmitted to the United States Circuit Court of Appeals of the Ninth Circuit in pursuance of the appeal taken in said cause by the various appellants referred to in the petition for an order allowing appeal on file herein, the said petition being the sole petition for an order allowing an appeal which has been filed in this case; and please include in said record the following:

1. The original petition of the above named debtor.

2. Each and all of the answers, objections, motions, and pleadings of the dissenting bondholders, who are appellants in the above entitled cause. (Before the time for preparing the record has expired, some portion of the pleadings referred to may be eliminated from the record by stipulation.)

3. All orders made upon motions made in the above entitled cause and all exceptions to any and all such orders. [270]

4. All stipulations made and filed in the above cause by the parties thereto.

5. The Findings made by the court in said cause.

6. The interlocutory order or judgment made in said cause confirming the petitioner's plan.

7. All exceptions to said order.

8. Petition for and order allowing appeal.
9. Assignment of errors.
10. Clerk's certificate of record.
11. Conclusions of the court.
12. Praecipe for transcript.
13. Stipulation as to transcript and omissions from same if stipulation be obtained and filed.
14. Citation on appeal with proof of service.
15. Bond on appeal.
16. Statement of evidence under Equity Rule 77 to be hereafter prepared and lodged with the Clerk pursuant to Equity Rule 75. (The time for completing this statement will be extended and the statement that may be prepared under new Rule of Civil Procedure 75 may by stipulation of the parties serve as the statement mentioned in this item.)
17. Claims of bondholders.
18. Notice of appeal to the Circuit Court of Appeals under Rule 73A.
19. Designation of contents of record on appeal.
20. Statement of points.
21. Stipulations and orders extending time to docket appeal.
22. Order fixing bond. [271]
23. Notice to Reconstruction Finance Corporation.
24. Order extending time to file objections.
25. Objections to proposed additional findings, proposed findings, notice of entry of judgment, and affidavit of mailing.
26. Notice of entry of judgment.

27. Notice of motion for new trial.
 28. Affidavits.

Dated: April 25, 1939.

CHAS L. CHILDERS
 HUGH K. McKEVITT
 CLARK, NICHOLS & ELTSE
 CHASE, BARNES & CHASE
 DAVID FREIDENRICH
 PETER TUM SUDEN
 BROBECK, PHLEGER & HARRISON
 W. COBURN COOK
 By W. COBURN COOK,

Attorneys for Appellants.

Receipt of a copy of the foregoing Praecepte acknowledged this 27th day of April, 1939.

C. RAY ROBINSON,
 HUGH K. LANDRAM,
 DOWNEY, BRAND & SEYMOUR,
 STEPHEN W. DOWNEY,
 Attorneys for Merced Irrigation
 District, Appellee. [272]

State of California,
 County of Stanislaus—ss.

AFFIDAVIT OF SERVICE BY MAIL

Esther Mortensen, being first duly sworn, deposes and says:

That she is a citizen of the United States, resident of the County of Stanislaus, over the age of

eighteen years and not a party to nor interested in the above entitled matter; that on the 25th day of April, 1939, she placed a full, true, and correct copy of the annexed Praeceptum in an envelope, duly sealed and deposited the same in the United States Post Office, at Turlock, California, with the postage thereon fully prepaid, addressed to Reconstruction Finance Corporation, Washington, D. C.; that there is a regular daily communication by mail between Turlock, California, and Washington, D. C.

ESTHER MORTENSEN.

Subscribed and sworn to before me this 25th day of April, 1939.

[Seal] GILBERT MOODY,
Notary Public in and for the County of Stanislaus,
State of California.

[Endorsed]: Praeceptum filed May 2, 1939. [273]

[Title of District Court and Cause.]

PRAECEPTUM

To the Clerk of the above entitled Court:

In addition to the matters called for by the praecipe of appellants herein please incorporate into the transcript of the record to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, the following:

1. Order of the above entitled court approving the petition herein as properly filed; also order fixing a time and place for a hearing on the petition

herein, providing that notice be given the creditors, and prescribing the form of such notice; also the notice to creditors signed by the clerk; also all affidavits of publication of notice to creditors, and affidavits of mailing same to creditors; also all minute orders or other orders continuing the hearing of this proceeding from time to time.

2. All evidence or testimony adduced on the trial, including all exhibits and all stipulations entered into during the trial. (After appellants have filed their designation of the portions of the record, proceedings and evidence to be contained in the record on appeal and their statement of the points on which they intend to rely, some portion of the foregoing may be omitted by stipulation). [274]

3. Conclusions and opinion of the Court, dated January 10, 1939.

4. Certified copy of Resolution of Board of Directors of Merced Irrigation District Consenting to the Plan of Composition of Bond Indebtedness; Certified Copy of Resolution of Intention to Adopt Resolution; Affidavit of Publication of Notice of Intention of Board of Directors of Merced Irrigation District to Adopt Resolution; and Affidavit of Posting Notice of Intention of Board of Directors of Merced Irrigation District to Adopt Resolution, filed herein February, 1939.

5. Findings of Fact and Conclusions of Law.

6. Interlocutory Decree, dated February 21, 1939 at 1:05 P. M. and filed February 21, 1939, at 1:54 P. M.

This notice is given in response to the praecipe of appellants and especially reserves the right to urge in the United States Circuit Court of Appeals and in all other courts that the United States Circuit Court of Appeals has not acquired jurisdiction of the appeal herein.

Dated: April 29, 1939.

C. RAY ROBINSON
HUGH K. LANDRAM
DOWNEY, BRAND & SEYMOUR
STEPHEN W. DOWNEY

Attorneys for Merced Irrigation
District, Appellee.

[Served by Mail.]

[Endorsed]: Filed May 1, 1939. [275]

[Title of District Court and Cause.]

STATEMENT OF POINTS

The appellants, West Coast Life Insurance Company, a corporation; Pacific National Bank of San Francisco, a national banking association; Mary E. Morris; R. D. Crowell; Belle Crowell; Claire S. Strauss; Minnie E. Rigby as Executrix, and Richard tum Suden as Executor of the Last Will of William A. Lieber, Alias, Deceased; Florence Moore; American Trust Company as trustee under a certain agreement between R. S. Moore and Amer-

ican Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary D. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. [276] Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Mar-

garet B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the estate of J. N. Gillett, deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances V. Wheeler; Miriam H. Parker; Apphia Vance Morgan; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspergren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper; and W. S. Jewell, state that the points on which they intend to rely on the appeal in this cause are the following:

1. Chapter IX of the Bankruptcy Act of the United States is unconstitutional and void and affects the property interests of the appellants in that it violates Article I, Section 10, Clause 1, of the Constitution of the United States and the Fifth, Tenth, and Fourteenth amendments to the Constitution of the United States.

2. The State of California has not consented and cannot consent to these proceedings.

3. The trial court had no jurisdiction of the cause nor of the parties.

4. The cause is *res judicata*.

5. The proceedings herein were and are barred by proceedings pending in the Superior Court of the State of California under the provisions of Statutes of California 1937, Chapter 24.

6. The State of California has otherwise provided for the control and exercise of the political and governmental powers of [277] Merced Irrigation District through the enactment of the Califor-

nia Irrigation Districts Act, the District Securities Commission Act, and Statute of California, 1937, Chapter 24.

7. The Interlocutory Decree in this cause interferes with the political and governmental powers of the Merced Irrigation District and the property and revenues thereof necessarily essential for governmental purposes.

8. By the provisions of Section 83 of the Bankruptcy Act the court is without power to apply its order to this irrigation district.

9. The plan of composition herein is unfair, inequitable, and unjust and is not for the best interests of the creditors and it discriminates unfairly in favor of the Reconstruction Finance Corporation.

10. The plan does not comply with the provisions of Chapter IX of the Bankruptcy Act of the United States.

11. The plan of composition has not been accepted and approved as required by the provisions of Subdivision (d) of Section 83 of the Bankruptcy Act.

12. The offer of the plan and its acceptance are not in good faith.

13. The Merced Irrigation District is not authorized by law to take all action necessary to be taken to carry out the plan of composition.

14. The Merced Irrigation District, at the time of the filing of its petition was not and is not insolvent, nor unable to pay its debts as they mature.

15. 51% of the amount of securities affected by the plan, excluding any such securities owned, held, or controlled by the petitioner, had not accepted the plan of composition herein in writing or otherwise, at the time of the filing of the petition herein, nor since. [278]

16. The court erred in making and entering its Findings of Fact and Conclusions of Law herein, and in entering the Interlocutory Decree.

17. The State of California could not, by its consent to the proceedings, bind non-residents of the State of California.

18. The evidence adduced at the hearing was insufficient to sustain the petition.

19. The court erred in classifying the creditors, including the Reconstruction Finance Corporation as one class.

20. The court erred in finding and holding that the Reconstruction Finance Corporation is a creditor affected by the plan.

21. The court erred in finding and holding that the Reconstruction Finance Corporation is the owner or holder of the original bond issues of the Merced Irrigation District entitled to vote on the plan of composition herein.

22. The court erred in entering a decree herein taking vested rights of the appellants.

23. The court erred in taking jurisdiction of the public trust imposed upon the Merced Irrigation District under the California Irrigation District

Act and in administering the same and in depriving the appellants of their rights as beneficiaries of such trust.

24. The court erred in finding and holding that two-thirds of the aggregate amount of claims of all classes, affected by the plan of composition herein, and which have been admitted by the petitioner, or allowed by the Judge, but excluding claims owned, held or controlled by the petitioner, have accepted the plan of composition in writing.

CHAS L. CHILDERS,

Attorney for West Coast Life Insurance Company. [279]

HUGH K. McKEVITT,

Attorney for Pacific National Bank of San Francisco.

CLARK, NICHOLS & ELTSE,

By GEORGE CLARK,

Attorneys for Mary E. Morris.

CHASE, BARNES & CHASE,

By LUCIUS F. CHASE,

Attorneys for R. D. Crowell and Belle Crowell.

PETER TUM SUDEN,

Attorney for Minnie E. Rigby as Executrix, and Richard tum Suden as Executor of the Last Will of William A. Lieber, Alias, Deceased.

DAVID FREIDENRICH,

Attorney for Claire S. Strauss.

BROBECK, PHLEGER & HARRISON,
SON,

By EVAN HAYWER,

Attorneys for Florence Moore; American Trust Company as trustee under a certain agreement between R. S. Moore and American Trust Company dated December 15, 1927; Crocker First National Bank, as trustee under a certain agreement between Florence Moore and Crocker First Federal Trust Company, dated December 15, 1937.

W. COBURN COOK,

Attorney for Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; Mary B. Cates; John D. Bicknell Bagg; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary

Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller, Fannie M. Dole; James Irvine; J. C. Titus; Sam J. Eva, William F. Booth Jr., George N. Keyston, George W. Pracy; H. T. Harper, and George B. Miller as trustees of Cogswell Polytechnical College; [280] Tulocay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Julia Sunderland; Lily Sunderland; Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason; Gilbert Moody; William Payne; C. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as executrices of the Estate of J. N. Gillett, deceased; Theo. F.

Theime; Fletcher F. Flaherty;
Frances V. Wheeler; Miriam H.
Parker; Apphia Vance Morgan;
First National Bank of Pomona;
George F. Covell; Alma H.
Woore; George Habenicht; Seth
R. Talcott; Adolph Aspegren; J.
H. Fine; Mrs. J. H. Fine; F. F. G.
Harper; and W. S. Jewell,
Attorneys for Appellants.

[Endorsed]: Filed May 31, 1939. [281]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL.

The appellants West Coast Life Insurance Company, a corporation, et al., hereby designate as the contents of the record on appeal to the Circuit Court of Appeals for the Ninth Circuit herein, the following portions of the records, exhibits, and evidence to be contained in the record on appeal, to-wit:

1. The original petition of the above named debtor for confirmation of a plan of composition.
2. Stipulation relating to order approving petition and notice of hearing dated May 12, 1939.
3. Answer of Mary E. Morris.

4. Answer of West Coast Life Insurance Company.
5. Answer of Milo W. Bekins, et al.
6. Stipulation relating to answer of Florence Moore, et al.
7. Proof of claim of Reconstruction Finance Corporation.
8. Proof of claim of appellants West Coast Life Insurance Company, Mary E. Morris, R. D. Crowell, and Belle Crowell.
9. Stipulation (relating to inclusion of claims in answers).
10. All orders made upon motions made in the above entitled cause and all exceptions to any and all such orders.
11. Stipulation and order (relating to F. F. G. Harper and W. S. Jewell.)
12. All other stipulations made and filed.
13. Notice to Reconstruction Finance Corporation.
14. Order extending time to file objections.
15. Proposed modification of plan.
16. Conclusions of the court. [282]
17. Findings made by the court.
18. Minute order of January 10, 1939.
19. Objections to proposed findings of fact and conclusions of law.
20. Respondents proposed additional findings to petitioners findings of fact and conclusions of law.

21. Interlocutory decree or judgment made in said cause concerning the petitioner's plan.

22. Notice of entry of judgment or decree.

23. Notice of motion for new trial and order thereon.

24. Motion for new trial.

25. Affidavits in support of motion for new trial by Lucius F. Chase, N. Walter Strange, and John V. Murphey.

26. Affidavits in opposition to motion for new trial by E. Charles Lombard, H. P. Sargent, and E. E. Neel.

27. Petition for and order allowing appeal and fixing bond.

28. Assignment of errors.

29. Bond on appeal.

30. Citation on appeal with proof of service thereof.

31. Notice of appeal to the Circuit Court of Appeals under rule 73(a), with clerk's docket entry showing service thereof.

32. Order fixing bond on appeal.

33. Praecipe for transcript.

34. Appellee's praecipe for transcript.

35. This designation of the contents of record on appeal.

36. Statement of points.

37. Stipulations and orders extending time to docket appeal.

38. Condensed statement in narrative form of the testimony now in course of preparation and stipulation relating thereto.

39. Appendix to condensed statement of evidence with stipulations, if any.

40. Stipulation for transfer of original exhibits and orders thereon. [283]

41. All minute orders.

42. Resolution of Board of Directors of Merced Irrigation District consenting to plan of composition.

43. Proposed findings of fact and conclusions of law.

44. Reporter's transcript of evidence and proceedings and such original exhibits as may be covered by stipulation.

45. Clerk's certificate of record.

CHAS. L. CHILDERS,
HUGH K. McKEVITT,
CLARK, NICHOLS & ELTSE,
CHASE, BARNES & CHASE,
DAVID FREIDENRICH,
PETER TUM SUDEN,
BROBECK, PHLEGER & HARRISON,
W. COBURN COOK,
By W. COBURN COOK,

Attorneys for Appellants.

[Endorsed]: Filed May 31, 1939. [284]

AFFIDAVIT OF SERVICE BY MAILING.

State of California,
County of Stanislaus—ss.

J. Alfred Swenson, being first duly sworn, says: That he is a citizen of the United States, residing in the City of Turlock, California, in the County of Stanislaus, where the mailing hereafter referred to took place; that he is over the age of eighteen years and not a party to the above entitled cause; that on the 27th day of May, 1939, he deposited in the United States Post Office, at Turlock, California, sealed envelopes, with postage thereon fully prepaid, each of which contained a true copy of the Designation of Contents of Record on Appeal and Statement of Points the original of which is hereunto affixed. That one of the said envelopes was addressed to Reconstruction Finance Corporation, Washington, D. C.; and another to Downey, Brand & Seymour, Capital National Bank Bldg., Sacramento, California, and another to Messrs. Hugh K. Landram and C. Ray Robinson, Shaffer Building, Merced, California. That there is a regular communication by mail between the place of mailing and the places so addressed.

J. ALFRED SWENSON.

Subscribed and sworn to before me this 27th day of May, 1939.

[Seal] GILBERT MOODY,
Notary Public in and for the County of Stanislaus,
State of California.

[Endorsed]: Filed May 31, 1939. [285]

[Title of District Court and Cause.]

STIPULATION AND ORDER

In the above cause it is stipulated:

1. That appellants shall have to and including May 10, 1939, to file with the Clerk of the Court their designation of the portions of the record, proceedings and evidence to be contained in the record on appeal, and within which to file their statement of the points on which they intend to rely: but appellee expressly reserves the right to urge in the U. S. Circuit Court of Appeals and in all other courts that the U. S. Circuit Court of Appeals has not acquired jurisdiction of the appeal herein.

2. The time for filing the record on appeal and docketing said cause is extended to and including May 27, 1939.

3. The above entitled Court may make an order extending time in accordance with the foregoing stipulation.

Dated: April 25, 1939.

C. RAY ROBINSON,
HUGH K. LANDRAM,
DOWNEY, BRAND & SEYMOUR,
STEPHEN W. DOWNEY,

Attorneys for Merced Irrigation
District, Appellee. [286]

CHAS. L. CHILDERS,
HUGH K. McKEVITT,

CLARK, NICHOLS & ELTSE,
CHASE, BARNES & CHASE,
DAVID FREIDENRICH,
PETER TUM SUDEN,
BROBECK, PHLEGER & HARRISON,
and W. COBURN COOK,
By W. COBURN COOK,
Attorneys for Appellants.

ORDER

In the above cause and pursuant to the above and foregoing stipulation it is ordered that appellants shall have to and including May 10, 1939, within which to file with the Clerk their designation of the portions of the record, proceedings and evidence to be contained in the record on appeal in the above cause and within which to file their statement of the points on which they intend to rely. It is further ordered that the time for filing the record on appeal and docketing said cause is extended to and including May 27, 1939.

Dated: May 2, '39.

PAUL J. McCORMICK,
U. S. District Judge.

[Endorsed]: Filed May 2, 1939. [287]

[Title of District Court and Cause.]

ORDER

Good cause appearing, it is ordered in the above-entitled case in connection with the appeals of West Coast Life Insurance Company, a corporation, et al., to the United States Circuit Court of Appeals for the Ninth Circuit that the time for filing the record and transcript on appeal in said cause and the time for docketing of said cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco (as to appellants' appeals under both the old and new methods of appeal) shall be and the same is enlarged and extended to and including May 27, 1939.

Dated: April 25th, 1939.

PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Filed April 25, 1939. [289]

[Title of District Court and Cause.]

ORDER

Good cause appearing, it is ordered in the above entitled case in connection with the appeals of West Coast Life Insurance Company, a corporation, et al., to the United States Circuit Court of Appeals for the Ninth Circuit that the time for filing the record and transcript on appeal in said cause and

the time for docketing of said cause with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco, shall be and the same is enlarged and extended to and including June 27, 1939.

PAUL J. McCORMICK,

Judge, United States District Court

[Endorsed]: Filed May 18, 1939. [291]

[Title of District Court and Cause.]

ORDER

Upon application of the appellants and stipulation between the parties, and good cause therefor appearing, it is ordered that the time within which appellants may file their proposed narrative statement of evidence and docket the appeals in the Circuit Court of Appeals for the Ninth Circuit in the above cause be, and hereby is extended to and including July 26, 1939.

CURTIS D. WILBUR,

Judge, United States Circuit Court.

[Endorsed]: Filed Jun. 22, 1939. [293]

[Title of District Court and Cause.]

STIPULATION

It is stipulated between Appellants and Appellee that whereas Appellants and Appellee have in fact

been diligently and without delay, working upon the record on appeal in this case, in an effort to reduce the very bulky record of the testimony to a shorter and more concise form, and because of the tremendous amount of labor involved, and the number of counsel, it has been impossible to complete the record on appeal prior to the expiration of ninety days from the giving of notice of appeal.

Now, therefore, it is stipulated by and between the parties that the time for filing the Narrative Statement of Evidence in this cause may be extended to and including July 26, 1939, and the time for docketing the appeals in the Circuit Court of Appeals of the Ninth Circuit may be likewise extended to and including July 26, 1939; but appellee expressly reserves the right to urge in the United States Circuit Court of Appeals, and in all other courts, that the United States Circuit Court of Appeals has not [294] acquired jurisdiction of the appeal herein.

Dated: June 15th, 1939.

C. RAY ROBINSON,
HUGH K. LANDRAM,
DOWNEY, BRAND & SEYMOUR,
STEPHEN W. DOWNEY,

Attorneys for Appellee.

CHAS. L. CHILDERS,
HUGH K. McKEVITT,
CLARK, NICHOLS & ELTSE,
CHASE, BARNES & CHASE.

DAVID FREIDENRICH,
PETER TUM SUDEN,
BROBECK, PHLEGER & HARRISON,
W. COBURN COOK,

By W. COBURN COOK,

Attorneys for Appellants. [295]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages, numbered from 1 to 295, inclusive, contain the original Citation and Affidavit of Service on R. F. C. and full, true and correct copies of the Petition of Debtor for Confirmation of Plan of Composition, with Exhibits A and B; Stipulation Eliminating Exhibits C and D to the Petition, dated May 29, 1939; Stipulation that Petition was properly Filed and Approved and Notices given, dated May 12, 1939; Minutes of Sept. 12, 1938; Answers and Objections of West Coast Life Insurance Co., with Exhibit A; Stipulation Relating to the Answers of Florence Moore, et al; Answer of Mary E. Morris, with Exhibits A and B; Statement of Claim of West Coast Life Insurance Company; Claims of R. D. Crowell; Claim of Belle Crowell; Answer and Objections to the Petition by Milo W. Bekins,

et al., and Proof of Claim; Minutes of Oct. 10, 1938; Minutes of October 13, 1938, Order for Notice to R. F. C.; Notice of Clerk to R. F. C.; Minutes of Oct. 31, 1938; Minutes of Nov. 14, 1938; Minutes of Nov. 15, 1938, Order Quashing Subpoena Duces Tecum; Stipulation that Claims may be Attached to Verified Answers; Minutes of Nov. 21, 1938; Minutes of Nov. 22, 1938; Minutes of Nov. 23, 1938, Order Denying Motion to Dismiss; Minutes of Nov. 25, 1938; Minutes of Nov. 30, 1938; Stipulation and Order relating to F. F. G. Harper and W. S. Jewell; Proposed Modification of Plan; Minutes of Jan. 10, 1939, Order for Decree Confirming Plan; Conclusions and Opinion of the Court; Order Extending Time for Filing Objections and Exceptions to Proposed Findings and Decree; Resolution of Board of Directors of Debtor Consenting to the Plan; Resolution of Intention to Adopt Resolution; Affidavit of Publication of [296] Notice of Intention; Affidavit of Posting Notice of Intention; Objections to Proposed Findings of Fact and Conclusions of Law and Decree; Proposed Additional Findings; Findings of Fact and Conclusions of Law Signed and Filed Feb. 21, 1939; Interlocutory Decree Approving Plan Filed Feb. 21, 1939; Notice of Entry of Judgment; Affidavit of Service of Notice of Entry of Judgment; Notice of Motion for New Trial; Motion for New Trial; Affidavit of Lucius Chase on Motion for New Trial; Affidavit of N. Walter Stange on Motion for New

Trial, including part of Exhibit "X" (for Exhibits attached hereto see Appendix to Statement of Evidence); Affidavit of John V. Murphy on Motion for New Trial; Affidavit of E. Charles Lumbard on Motion for New Trial; Affidavit of H. P. Sargent; Affidavit of E. E. Neel; Minutes of March 20, 1939, Hearing Motion for New Trial and Submission; Minutes of March 28, 1939, Order Denying Motion for New Trial; Order Denying Motion for New Trial; Notice of Appeal; Petition for Appeal; Order Allowing Appeal; Order Fixing Bond on Appeal; Assignments of Error; Bond for Costs on Appeal; Praecipe of Appellant; Counter-praecipe for Appellee District; Statement of Points on Appeal; Designation of Record on Appeal by Appellant, which together with Four Stipulations and Orders Extending Time to Docket Appeal, the Statement of Evidence, Appendix, Stipulation and Order attached thereto for transmittal of original Exhibits "00" and 35, the original Exhibits and the Reporter's Transcript of Proceedings transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$52.10, and that said amount has been paid me by the Appellants herein.

Witness my hand and the Seal of the District Court of the United States for the Southern Dis-

trict of California, this 24th day of July, A. D. 1939.

[Seal]

R. S. ZIMMERMAN,

Clerk.

By EDMUND L. SMITH,

Deputy Clerk. [297]

[Title of District Court and Cause.]

CONDENSED STATEMENT IN NARRATIVE
FORM OF THE TESTIMONY

Be it remembered, that this cause came on regularly for hearing in the above entitled Court, before the Hon. Paul J. McCormick, judge presiding, upon the petition for confirmation of a plan of composition of bond indebtedness of Merced Irrigation District, and upon the several answers, objections and petitions in intervention of creditors of Merced Irrigation District, and upon the order of the court to determine whether or not Reconstruction Finance Corporation is a creditor of petitioner affected, except as to the respondent Mary E. Morris who did not join therein, at the court room of the above entitled Court, at Fresno, California, on **November 21, 1938**

At said hearing Messrs. Downey, Brand & Seymour, by Stephen W. Downey, Esq., H. K. Landram, Esq., and C. Ray Robinson, Esq., appeared for Merced Irrigation District, Petitioner;

Robert E. Walker, Esq., for the firm of Brobeck, Phleger & Harrison, appeared for objectors Florence Moore, American Trust Company, as trustee, and Crocker First National Bank, as trustee; [298]

George Clark, Esq., of the firm of Clark, Nichols & Eltse, appeared for the objector, Mary E. Morris;

Chas. L. Childers, Esq., appeared for the objector, West Coast Life Insurance Company;

N. J. Hooey, Esq., representing Hugh K. McKevitt, Esq., appeared for objector, Pacific National Bank of San Francisco;

Peter tum Suden, Esq., appeared for the objectors Minnie E. Rigby, executrix, and Richard tum Suden executor of the last will of William A. Liebar, deceased;

W. Coburn Cook, Esq., appeared for objectors Milo W. Bekins and Reed J. Bekins as trustees appointed by the Will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Katherine Bekins, deceased; Reed J. Bekins; Cooley Butler; Chas. D. Bates; Lucretia B. Bates; Edna Bicknell Bagg; John D. Bicknell Bagg; Mary B. Cates; Nancy Bagg Eastman; Charles C. Bagg; Horace B. Cates; Barker T. Cates; Mary Edna Cates Rose; Mildred C. Stephens; N. O. Bowman; W. H. Heller; Fanie M. Dole; James Irvine; J. C. Titus; Sam J. Evan, William F. Booth, Jr., George N. Keyston, George W. Pracy, H. T. Harper and George B. Miller as Trustees of Cogswell Polytechnical College; Tulo-

cay Cemetery Association, a corporation; Percy Griffin; Emogene Cowles Griffin; D. Lyle Ghirardelli; A. M. Kidd; Grayson Dutton; Frances N. Shanahan; Stephen H. Chapman; Edith O. Evans; J. Ofelth; Dante Muscio; I. M. Green; E. J. Greenhood; Otis M. Judson, Julia Sunderland; Lily Sunderland, Florence S. Ray; Joseph S. Ray; Amelia Kingsbaker; S. Lachman Company, a corporation; Sue Lachman; Sophia Mackenzie; Nettie Mackenzie; R. J. McMullen; J. R. Mason, Gilbert Moody; William Payne; G. H. Pearsall; Alice B. Stein; Sherman Stevens; E. G. Soule; Margaret B. Thomas; Isabella Gillett and Effie Gillett Newton as Executrices of the estate of J. N. Gillett, deceased; Theo. F. Theime; Fletcher G. Flaherty; Frances [299] V. Wheeler; Miriam H. Parker; Nicholas N. Prusch; Apphia Vance Morgan; H. S. Dutton; First National Bank of Pomona; George F. Covell; Alma H. Woore; George Habenicht; Seth R. Talcott; Adolph Aspegren; J. H. Fine; Mrs. J. H. Fine; F. F. G. Harper and W. S. Jewell;

David Freidenrich, Esq., for the firm of Freidenrich & Selig and Kirkbride & Wilson appearing for objector Claire S. Strauss;

Lucius F. Chase, Esq., for the firm of Chase, Barnes & Chase, appearing for R. D. Crowell and Belle Crowell.

Some of the parties named as objectors were described as objectors, others as interveners, and others as respondents, all being creditors, namely,

owners of bonds of Merced Irrigation District, involved and materially and adversely affected by the plan of composition proposed by Petitioner, and appearing in opposition to the plan of composition proposed by the Petitioner, Merced Irrigation District, and of these proceedings, and made and respectively filed answers and proofs of claims, in these proceedings.

The following is a condensed statement in narrative form of all of the testimony taken at the aforesaid hearing, to-wit:

The court stated that it desired evidence first on whether the Reconstruction Finance Corporation is a creditor affected by the plan to be followed by evidence on all the other issues. [300]

(The objecting bondholders are referred to as Respondents.)

The exhibits hereinafter referred to were offered and received in evidence.

Petitioner's Exhibit No. 1 is a resolution of Reconstruction Finance Corporation. dated November 14, 1934, and is found at page 155 of Respondents' Exhibit "00".

Petitioner's Exhibit No. 2 is a resolution of the Board of Directors of petitioner dated December 11, 1934, and is found at pages 180 to 183 of Respondents' Exhibit "00".

Respondents objected to petitioner's Exhibit No. 2 on the ground that there is no foundation laid and no authority to make the resolution unless that

authority is later shown by showing the election authorizing the proceeding.

Petitioner's Exhibit No. 3 is a resolution of the Board of Directors of petitioner, dated February 11, 1935, and is found at pages 183 to 192 of Respondents' Exhibit "00".

Petitioner's Exhibit No. 4 is an amendment of Reconstruction Finance Corporation to its resolution of November 14, 1934, and is found at the bottom of page 192 of Respondents' Exhibit "00".

Respondents reserved the right to object to petitioner's Exhibit No. 4 as being a modification of the original resolution and the acceptance of that and the modifying agreement was not approved by the electors at an election in the District.

The objection was overruled tentatively subject to being deemed erroneous later.

Mr. Friedenrich did not join in said objection.

At this point it was stipulated by Counsel and approved by the Court that every adverse ruling of the Court to objections made by any of the respondents or objectors would be deemed excepted to and that any objection, stipulation or admissions made by counsel for any of the respondents or objectors would be deemed to be made on behalf of all of them unless otherwise noted at the time. [301]

Petitioner's Exhibit No. 5 is a resolution of Reconstruction Finance Corporation as a further amendment to the resolution of November 14, 1934, and is found at page 193 of Respondents' Exhibit "00".

Respondents made the same objection to petitioners' Exhibit No. 5 as was made to petitioner's Exhibit No. 4, with the same ruling.

Petitioner's Exhibit No. 6 is a resolution of the Board of Directors of petitioner of July 23, 1935, and is found at pages 194 to 197 of Respondents' Exhibit "00".

Petitioner's Exhibit No. 7 is a resolution of the Board of Directors of petitioner of September 18, 1935 and is found at pages 198 to 201 of Respondents' Exhibit "00".

Petitioner's Exhibit No. 8 is an agreement entitled "Bond Purchase Contract" dated as of September 16, 1935, and is found at pages 202 to 217 of Respondents' Exhibit "00".

Respondents offered the same objection to petitioner's Exhibit No. 8 as was made to petitioner's Exhibits No. 4 and No. 5 with the same ruling.

Petitioner's Exhibit No. 9 is an agreement dated August 14, 1935, and is found at pages 217 to 221 of Respondents' Exhibit "00".

Respondents offered the same objection to Petitioner's Exhibit No. 9 with the same ruling.

D. B. ATKINS,

a witness on behalf of the petitioner, being duly sworn, testified as follows:

My residence is at Fairfax, California, Marin County. I am an employee of the Federal Reserve

(Testimony of D. B. Atkins.)

Bank of San Francisco in charge of disbursement of the funds in connection with Merced Irrigation District transactions and handled the mechanics of the disbursements of the funds for Reconstruction Finance Corporation in connection with Merced Irrigation District bonds and I am [302] entirely familiar with it. The original disbursement was on or about October 4, 1935, and that was the biggest lot of the bonds. There were a little over \$14,000,000 on that first disbursement on October 4, 1935, and there have been subsequent small disbursements. The disbursement amounted to \$14,071,000 and represents securities that were taken in and we paid out funds in payment for those securities.

I have the original letter from Reconstruction Finance Corporation to the Federal Reserve Bank giving instructions in connection with that disbursement. The letter is dated September 19, 1935.

The letter is received in evidence as Petitioner's Exhibit No. 10, to which Respondents objected upon the ground that it purports to be a communication from a principal to an agent who is not a party to the action, immaterial and a self-serving declaration and also an attempt to alter the terms of the contract between R. F. C. and Merced Irrigation District.

The objection was overruled.

(Testimony of D. B. Atkins.)

The principal portion of Petitioner's Exhibit No. 10 is set out in the Appendix (p. 557).

The Witness: At the time the disbursement was made pursuant to the letter which is in evidence, I took completed memorandums of sale and receipts from the various depositaries, and holders of the bonds in the form attached to the letter. These are photostatic copies of the bills and receipts.

Subject to the same objections and the same rulings the photostatic copies of the bills and receipts were introduced in evidence as petitioner's Exhibit No. 11 and are in substantially the form of Memorandum of Sale attached to Exhibit 10. (p. 574).

[303]

The Witness: The bills of sale were given by the depositaries only and not by the committee. The Security First National Bank, The Capital National Bank, Bank of America, Citizens National Bank and Anglo California National Bank were the depositaries for the committee and gave the bills of sale.

It was conceded that the voluntary Bondholders Protective Committee had deposited many of the bonds with the banks as depositaries and that the banks in turn had executed bills of sale for the committee bonds.

The Witness: Our position in this matter as custodian and fiscal agent is that we followed the instructions which are outlined in this letter (Exhibit

(Testimony of D. B. Atkins.)

10) and we obtained documents which are similar to the exhibits attached.

Mr. Cook offered the following statement: That between 50 and 60% of the bondholders, prior to the end of 1933, had deposited their bonds with the voluntary bondholders protective committee, and that that bondholders committee had under their deposit agreement authority to make some disposition, what disposition they might make within their discretion, of those bonds; that subsequently they circularized the bondholders on the question of whether the bondholders would prefer the cash offer plan, i.e. \$515.01 cash for each \$1000 bond, or the refunding plan under which they were to get a \$1000.00 bond with certain reduced interest for 7 years, and that, after receiving a reply by questionnaire that the majority of the bondholders preferred the cash offer plan, the committee then came into court under Section 80, the case we have referred to already today, and filed a consent to the plan that was there proposed; that subsequently, and before that case was disposed of by this court, the Reconstruction Finance Corporation, through the Federal Reserve Bank, obtained or acquired without saying what the legal process was, the physical custody of these bonds through these documents that you have shown here, and that prior to that, [304] however, the bondholders committee

(Testimony of D. B. Atkins.)

executed an agreement of some character to the depositories, who acted as owners agent, and surrendered the bonds to the Federal Reserve Bank; that that is the history of the transaction.

In reply to the foregoing offer Mr. Downey stated: In the main, that is right.

The Witness: After this first "big disbursement" additional bonds were taken over by the Federal Reserve Bank. The additional bonds were taken over the counter. No bills of sale were taken subsequent to the original disbursement. I have a telegram from Mr. Mulligan, treasurer of the Reconstruction Finance Corporation, instructing us to waive supporting documents other than Exhibit "B" in connection with the purchase of bonds. The telegram reads as follows:

"From Mullign, RFC

"Washington, DC

Oct. 26, 1935

"Relet Sept. 19, 1935 concerning Merced Irrigation District instructions as amended further amended to permit purchase from any owner or bearer any district bonds provided they compare as to text and signatures with any bond of the respective issues now held by you as custodian. Supporting documents other than Exhibit B not required. You are authorized to proceed on this basis other terms and conditions remaining unchanged."

(Testimony of D. B. Atkins.)

Exhibit "B" is executed by the Treasurer of the district certifying as to the validity of the securities.

This last purchase covered bonds in the principal amount of \$631,000.00 making a total that has been taken over of \$14,702,000.00. With the exception of \$631,000.00 principal amount we hold bills of sale for all of the bonds. We have in our vault, \$14,702,000.00 par value of securities. \$14,071,000.00 of those securities were taken and bills of sale received; \$631,000.00 worth of these securities were taken and no bills of sale received. \$631,000.00 were over the counter purchases.

Our instructions were further modified by the [305] following telegram:

"From Mulligan R.F.C.

"Washington D. C. Dec. 17/35

"Retel October 26th, concerning Merced Irrigation District, instructions further amend to permit district to pay January 1st, accrued interest by issuing its warrant drawn against the general fund. You will not present matured interest coupons. You are authorized to proceed on this basis other terms and conditions previous authorizations remaining unchanged."

(Testimony of D. B. Atkins.)

And our instructions were further changed by the following telegram:

“From R.F.C. Washington D. C. June 18
1936.

“Re Merced Irrigation District you are hereby authorized to permit J. R. McHenry, district treasurer to register all bonds and coupons maturing on or before July 1, 1936. You may accept McHenry’s facsimile signature. Interest coupons will not therefore accompany your bill to district for interest due July 1, 1936.”

These telegrams were all received and routed to me personally and are original telegrams.

Mr. McHenry was the treasurer of the district and following these instructions the bonds of the Merced Irrigation District and the Federal Reserve Bank were registered in the name of Reconstruction Finance Corporation as owner. They bear the date of registration and read: “This bond is registered pursuant to the statute in such cases made and provided, in the name of Reconstruction Finance Corporation, and the interest and principal thereof are hereafter payable to such owner,” and has a facsimile signature of James R. McHenry, treasurer of Merced Irrigation District.

At the time the bonds were registered in the name of Reconstruction Finance Corporation as owner they were in custody of the Federal Reserve Bank

(Testimony of D. B. Atkins.)

and all bonds held by us were so registered and all bonds that have been taken in since have also been registered in the name of Reconstruction Finance Corporation as owner. The registration we are talking about is a registration of the ownership where, under the statute, the owner of the bond is permitted to register his bond; that is to say, the bond is stamped with the name of the owner. I cannot tell you the exact [306] date of registration but it was during the latter part of June, 1936. And all of the bonds that we held at that time were registered, and the additional bonds that have come in since were registered as they came in. All of these bonds are today at the Federal Reserve Bank in our vault and are held at the order of Reconstruction Finance Corporation. The original letter of instruction requires the disbursement of this money, as I remember it, by September 30, 1935 but that has been extended periodically since that date and I believe it is in effect at the present time. I am not sure of that. Right up to the present time we have been taking these bonds whenever they are offered. I mean by that that this original letter of instruction stipulates that from time to time but not later than September 30, 1935 we will purchase for Reconstruction Finance Corporation account bonds presented on the following terms and conditions.

Now, after this, the date of September 30, 1935,

(Testimony of D. B. Atkins.)

the time was extended by the corporation sometimes a month and sometimes three months at a time but each time they would come and extend our authority to purchase additional bonds. We would purchase the bonds when they were presented. Otherwise, we did nothing but file the authority to purchase bonds when they were presented. They were purchased periodically along during that period. There were some twenty purchases, separate purchases from October 14 to September 22, 1938 was the last purchase. We made purchases in '35, '36 and in 1937 and in 1938.

The respondent stated that it is understood that the use of the term "purchase" is being objected to without the necessity of repeating the objection. To which statement the Court concurred.

The Witness: We paid the amount to any person who presented bonds and said they were the owner of the bonds and after the transaction the bonds would be placed in our vault for safe keeping for the [307] account of Reconstruction Finance Corporation and the money would be delivered to the proper owner in the form of a treasury check. The check drawn on the treasurer of United States. There was never any fluctuation in the value of the bonds. Every bond we have taken has been at the price of \$515.01. The date of the last purchase was September 22, 1938, \$3,000.00. A

(Testimony of D. B. Atkins.)

check was issued for \$1414.73. Apparently some coupons were missing from those bonds and therefore the extension does not equal three times \$515.01.

This is a file copy of telegram to Mulligan, R.F.C., Washington:

“to Mulligan R F C Washington June 19, 1936
Retel June 18 regarding Merced Irrigation District. Representatives of District have called for the purpose of registering all matured and unmatured bonds of Merced Irrigation District held by us. Registering of unmatured bonds involves detachment of coupons and not registering coupons except on matured issues as authorized in your wire referred to above. We are informed by Mr. McHenry, District Treasurer, that there are two classes of registration—one—Registration of unmatured bonds as to ownership, and—two—Registering of matured bonds as to future payment. Matured coupons in latter case will not be detached as they are registered for future payment. Please advise.”

“June 20, 1936

“From Mulligan, RFC, Washington, D. C.

“Retel Osmer June 19th, Merced Irrigation District you will permit District treasurer McHenry to register as to ownership and for future payment all District bonds and appurte-

(Testimony of D. B. Atkins.)

nant coupons held by you including removal of such coupons as mature after January 1, '36. McHenry's facsimile signature permissible. Disregard instructions my wire June 18th."

MULLIGAN"

Cross Examination

The Federal Reserve Bank received no fees for our duties as custodian and fiscal agent for the Reconstruction Finance Corporation. They do, however, pay us out-of-pocket expenses and certain of our salaries are charged against them as a reimbursement of expenses. We charge them so much monthly for the duties which we perform for them which is reimbursable. We call that [308] reimbursable expense but we receive no other compensation from any source.

The telegram dated December 17, 1935 amended the last paragraph of the letter of September 19, 1935 directing us to present coupons for payment up to the amount of 4% per annum upon the amount of money disbursed and no coupons have ever been presented but a short time prior to each semi-annual interest date we sent down a notice of interest due.

Respondents' Exhibit "A" consists of three sheets which counsel for the District stipulates is a copy of the draft, voucher and whatever the third

(Testimony of D. B. Atkins.)

page purports to be and is set forth in the appendix. (p. 755)

The Witness: Referring to respondents' Exhibit "A" this is our statement.

Counsel for the Petitioner stipulates that the three sheets constituting respondents' Exhibit "A" is the set of forms that were used on each payment date.

The Witness: I believe the amounts on that voucher which is a part of respondents' Exhibit "A" are the several amounts that were paid out under those loan numbers referred to; that is to say, in connection with the taking in of the bonds. These amounts, for instance, under number 475 in the amount of seven million odd dollars was the amount that was paid or advances made in connection with the loan. We never paid any interest to the bondholders in any circumstances. We paid \$515.01 for the bond providing it had certain coupons attached. No interest was paid through us. Semi-annually we would bill the District for 4% interest on the advances that were made by the Federal Reserve Bank at the instance of RFC. This amounted to 2% semi-annually or 4% per annum. 4% per annum is the interest rate but we sent in the bills semi-annually and it was paid by the [309] District. Our instructions relative to the billing of the District for the interest semi-annually is contained in a letter which was read by Mr. Downey

(Testimony of D. B. Atkins.)

and the additional instructions amending the letter by a telegram which has been read and we have this telegram which I read yesterday dated December 17, 1935 and a part of that reads: "Permit District to pay January first accrued interest by issuing its warrant drawn against the general fund." I believe these are the only instructions which were given with respect to the funds from which this semi-annual interest was to be paid.

It is stipulated by counsel for the District that the form of warrant which was put in evidence was used throughout for each semi-annual payment.

The Witness: Our bookkeeping system is such that an outstanding debt is shown. For every advance which we make for the account of the RFC there is a ledger balance and that—. We do not credit ourselves in connection with these transactions. We draw a check against the treasurer of the United States in disbursing funds of this nature. There is a ledger account showing the indebtedness that RFC was liable to the Federal Reserve bank or the RFC in the amount of these different disbursements. For every advance made by the RFC regardless of for what purpose it is made it is given a number. What we call a custodian loan number and we have a ledger which we do not call a loan register necessarily. It is merely our ledger of accounts showing balances of custodian loans as we call them. Some are advances, some are loans and some are investments. They are all called cus-

(Testimony of D. B. Atkins.)

todian loans. If you look at our ledger you will find where said irrigation district debit, credit and balance. The Merced Irrigation District account is carried on our ledger under three or four different totals; that is, four different custodian loans have been made and in each [310] of them the Merced Irrigation District is charged with the amount of the particular loan and with interest upon that in our ledger and as the several warrants have been paid the interest has been credited. When we collect this money for the RFC the funds are telegraphed daily to the treasurer of the United States for the account of the Reconstruction Finance Corporation. On the same day we make certain reports which are mailed to the Reconstruction Finance Corporation and those reports will identify the funds as being entered. In this particular case we would notify them that we had collected so much interest from Merced Irrigation District on these particular loans identifying each of the loans by number.

It is stipulated by counsel that these bills of sale that purport to be signed by banks are all signed by the various depositaries that were named in the correspondence or in the letters that were addressed to different bondholders and that so far as these banks are concerned they were simply executing bills of sale covering bonds that had been deposited by bondholders.

(Testimony of D. B. Atkins.)

The bills of sale referred to are a part of petitioner's Exhibit No. 11. It is further stipulated that the bondholder's protective committee turned over a large amount of these bonds and in the communication which was read dated February 15, 1935 and which is Petitioner's Exhibit 13, it was suggested that bondholders who had not sent in their bonds could send them in to the depositories and that the bills of sale which are offered in evidence and which purport to be executed by these banks or trust companies are bills of sale which cover the whole of the bonds which were deposited with the committee and in addition a mass of bonds that were sent in by the various bondholders at the suggestion of the committee which is contained in the letter dated February 15, 1935 and that comprehends by far the greater portion of the bonds. It is further admitted by counsel for petitioner that the letter of February 15, 1935 (Exhibit 13) was sent by the bondholders' committee to each [311] and all of the bondholders of the District with the qualification that there were a few or quite a number at that time whose addresses were unknown but it was sent to everyone who held bonds and who could be located including those that had deposited and those that had not deposited.

Petitioner's Exhibit No. 12 is an enclosure referred to in the letter of February 15, 1935 (Exhibit 13) and appears in the Appendix. (p. 583)

(Testimony of D. B. Atkins.)

Petitioner's Exhibit No. 13 is the letter of February 15, 1935 above discussed or testified to and is set forth in the Appendix. (p. 586)

Petitioner's Exhibit No. 13 is the letter and Petitioner's Exhibit No. 12 is the enclosure in the letter which is the form of deposit.

It was conceded that this form of letter is the form that was executed by depositors who had not sent in their bonds to the bondholders committee. The mechanics were these: Where the bonds had already been deposited by the committee and were not withdrawn within the 30 day period then the committee deposited the bonds under the cash plan offer. If the bonds had not been deposited at all then the bondholder signs this letter of deposit wherein he deposited his bonds under the cash offer plan.

Respondents offer in evidence Respondents' Exhibit B which is a letter from the bondholders protective committee to the bondholders dated January 7, 1935, together with a form of questionnaire. The letter and the questionnaire therein enclosed are set forth in the appendix, page 758.

It is stipulated that Respondents' Exhibit "B" was a letter that went out with the questionnaire asking the bondholders what their vote would be on the cash offer plan.

Respondents' Exhibit "C" is a letter by petitioner dated January 10, 1938 and is summarized in the appendix. (p. 761) [312]

(Testimony of D. B. Atkins.)

It is stipulated that there is a statement in the letter with reference to the payment of the expenses of the committee and that it is true that the district did agree to pay those expenses and did pay the expenses; also that if any bondholder desired to withdraw his bond under the original deposit agreement he was required to pay his pro rata of the expense of the committee, the exact amount being set forth in that letter. It was conceded that the District agreed to pay the expenses of the bondholders committee conditioned upon this disbursement being made and after it had been made and not before. In other words, after the bonds had been deposited the District did pay the expenses of the committee even as to those who withdrew their bonds.

It is also admitted by counsel for the petitioner that the recital appearing in the opening sentence of the letter is correct and that the bondholders protective committee was in consultation with the Board of Directors of petitioner as to the form of the letter that should go out and that this was agreeable to both.

The petitioner agreed to meet and did meet not only the expenses mentioned in the letter but also all of the expenses of putting into effect the cash offer plan, payment of all of the printing, payment of all the expenses of soliciting over the entire period that the getting in of the bonds was occur-

(Testimony of D. B. Atkins.)

ring. \$515.01 was net to the bondholder. The aggregate of the expense of the cash offer plan and getting the bonds in under the cash offer plan, and which the district paid, was \$78,076.25, at the time of the first bankruptcy trial and adding additional expenses for the years 1936-1937 and 1938 brings the total for the expenses under the cash offer plan to \$98,888.99. There were also expenses during 1936-1937-1938 under the State Readjustment Act amounting to \$21,417.95.

Petitioner's Exhibit 14 consists of the judgment [313] roll in a certain action brought by petitioner to validate the refunding bonds under the terms of the resolution of November 14, 1934 and is summarized in the Appendix. (p. 597) [314]

Petitioner's Exhibit No. 15 is a resolution of the Board of Directors of Petitioner adopting the plan of composition which is the basis of this action and is set forth in the Appendix. (p. 635)

Petitioner's Exhibit No. 16 is the consent to the plan of composition by Reconstruction Finance Corporation dated June 9, 1938 and is in the Appendix. (p. 644)

Respondents objected to petitioner's Exhibit No. 16 on the ground that it is immaterial, no foundation, and no proof showing that R. F. C. is a creditor effected by the plan.

"The Court: As to the proper foundation, you are not objecting to the fact that they are not calling a witness, are you?"

(Testimony of D. B. Atkins.)

Mr. Childers: No.

The Court: The objection is overruled, subject to the reservation heretofore stated.”

At this point it is stipulated by all counsel that this proceeding so far as notice is concerned is duly before the Court at the time of trial; that all of the procedural forms up to the time of trial were complied with and that all parties were duly in court at the time of trial so far as notice is concerned except that the respondents reserve the objection to the petition on the ground that it is insufficient.

It was also stipulated that the refunding bonds of petitioner have not been printed, issued or delivered.

E. E. NEEL,

being called as a witness on behalf of petitioner stated:

I reside at Merced and I am the Auditor and the Treasurer of Merced Irrigation District. The refunding bonds which, under the resolution of November 14, 1934, are to go to the RFC have never been printed and obviously they have never been delivered to anybody.

“Mr. Downey: Now your Honor, we feel that the relations [315] between the district and the RFC and the question as to what their ownership or otherwise may be in these bonds is

(Testimony of E. E. Neel.)

determined by the official acts of both agencies, that is to say, the resolutions and the contracts and the bills of sale and so forth. Apparently counsel are going to introduce some evidence which will refer to accounts or something of that kind, as I gathered from the opening statements to that effect. I suppose that is in the nature of something like contemporaneous construction; in other words, that the relationship is not to be determined from the face of these documents which are the official acts but by the conduct of the parties. I am prepared to argue that at the proper time. What I want to establish now is that, if that type of testimony is to go in on this issue, I have a great deal of testimony and correspondence between the district and the RFC, a suit filed by the RFC against the district on these bonds, a resolution of the district acknowledging the bonds, and a vast amount of testimony of that kind, which would, I suppose, be rebuttal testimony if the testimony of the protestants is as I assume it is from their oral arguments, that is, something in the nature of a contemporaneous construction. I don't care about going into it now except that I would like to say to your Honor that, if this other type of testimony is admitted, then I will have to ask leave to put in rebuttal testimony of the same general character or type.

(Testimony of E. E. Neel.)

Mr. Clerk: Well, I don't like the generosity of counsel as to our position. We most emphatically contend, your Honor, that the resolution of November 14, 1934 and its acceptance of December 11, 1934 show the relationship in the nature of lender and creditor. We also contend that a practical construction is consistent with our contention if there be any uncertainty. And we also contend that under the law, if the district was permitted to use its cash in part in the taking up of these bonds, the RFC can not possibly contend that it is the absolute owner of the bonds. [316] If the district spent 5 per cent or 10 per cent, we contend that it is just as effective as against this sort of contention as if it had spent 90 per cent of the total that was being paid in the taking up of these bonds. So we don't admit at all that the documents establish absolute ownership in these bonds in the RFC. We contend the documents establish a debtor-creditor relationship and that practical construction bears out that contention. So our evidence on the practical construction of these documents is not accompanied by any concession that the instruments fairly construed, do not create the debtor-creditor relationship.

Mr. Downey: I have offered to your Honor what I think are all of the official acts which, in my judgment, constitute the contract. I think

(Testimony of E. E. Neel.)

from there on it is a question of whether the evidence that may be offered tends to alter or impair the contract. I don't care particularly whether they go into it or not but the point I am interested in is this, that, if they do go into that type of testimony, then I want to submit considerable additional testimony which is rebuttal and which will show, I think, a consistent conduct between the district and the RFC with respect to what I consider to be the meaning of the contracts themselves, although I recognize ultimately that we will have to debate that matter. I am not asking your Honor to rule on anything but I am merely stating my position in the matter of this time.

The Court: I don't want any of the litigants to misapprehend or misconstrue or misinterpret the court's action at this state of the proceeding either by the court remaining silent or by expressing itself. As I understand the situation between Mr. Downey and Mr. Clark, it is that each contends that the present state of the record shows their situations, respectively, Mr. Downey contending that it shows the relationship of vendor and vendee and Mr. Clark contending that it clearly shows the relation of borrower and lender. But Mr. Clark says that, if the court [317] should take the position that the present state of the record shows the rela-

(Testimony of E. E. Neel.)

tionship of vendor and vendee, that is not so clearly shown as to exclude the introduction of evidence which would indicate a practical construction otherwise of the contracting parties and that, therefore, the evidence which Mr. Chase suggested in the opening statement, and I think also Mr. Cook, is relevant here and is competent to be considered.

Mr. Clark: And that we desire to offer some evidence, your Honor, additionally to what has gone in.

The Court: If that is done, and it consists of documentary evidence additional to corporate fiscal books of entry and merges into correspondence between the entities, then I, of course, will permit the district in rebuttal to offer anything that would be explanatory of that type of evidence. If it is limited to the books, I suppose that the books will reflect the conditions. I am speaking now of the books of fiscal account or any other books of the corporate entities that reflect the corporate action that haven't already been introduced in the case. I haven't the slightest idea of what they have, of course.

Mr. Cook: I might state as preliminary, your Honor, that there is another aspect of that whole thing that has not been alluded to and that is that we are contending also that the

(Testimony of E. E. Neel.)

RFC has consented to and executed a plan previously, apart from these proceedings, which is largely shown by the records that we will introduce as to the two previous proceedings.”

The Court: I am not ruling anticipatory of anything. I am just simply giving you the views of the court on the divergent suggestions that have been made by respective counsel, and, if the court has not correctly stated it, I would be glad to have you call my attention to it.

Mr. Downey: I think it is very clearly stated, your Honor. In so far as the issue of whether the RFC is materially [318] interested here is concerned, we close that in chief but, of course, we understand that we are to proceed to other issues, I presume, at a later date.

The Court: That is right. I think the RFC issue to my mind is the paramount issue here at this time.”

Mr. Neel, being called as a witness on behalf of respondent stated: [319]

I am the Auditor and Treasurer of Merced Irrigation District. I heard the testimony of Mr. Atkins while he was on the stand to the effect that there were no payments made to the Federal Reserve Bank on account of bonds taken up except the payment of \$515.01 on the principal of the bond. It is a fact, however, that all of those bondholders who

(Testimony of E. E. Neel.)

were paid anything on account of their bonds on or prior to October 4, 1935 did receive something in addition to the sum of \$515.01 on a \$1,000 bond and the additional consideration was paid by Merced Irrigation District pursuant to the old original resolution of November 14, 1934 and the acceptance thereof. The depositing of these bonds with the various depositaries for the purpose of making same available for taking up by the RFC occurred between February 15, 1935 and October 3, 1935. The District was notified from time to time of the depositing and of the amount of the deposit of the bonds with the depositary. We received notice on or about October 3, 1935 that the District would have to pay various sums to the depositaries for the purpose of discharging the agreement to pay to the bondholders 4% interest upon the amount that was to be paid to them by RFC. The sort of a bill that came through to the District was a statement of the accumulated interest at 4% on the various amounts from February 15 to October 3. We received a very voluminous form of the original depositary slips or sheets from the various depositors and from which we checked the interest calculation that they had arrived at to cover that interest period. Each of the depositaries made a complicated computation covering the times of each deposit down to the date that the disbursement was made, representing every bond that was turned in to the depositaries.

(Testimony of E. E. Neel.)

The bills for that came to the District from the Depositories. Then following the receipt of these bills from the depositories the District through its board of directors adopted a resolution for paying all the bills and issued what we call [320] warrants. They were demands upon the Treasurer of the District issued pursuant to the District's resolution and the warrants were transmitted to the various depositories. The list which you hand me showing the dates of warrants, numbers of warrants, names of the depositories and amounts paid by them is correct.

The list referred to is introduced in evidence as Respondents' Exhibit "D" and is set forth in the Appendix. (p. 762).

The Witness: The total amount under Exhibit "D" is \$168,027.31 (the amount is written on Exhibit "D" under direction of the witness). The disbursement was considered a refinancing expense and it was entered in our ledger account for the District in that particular sum as one of the expenses.

We did not at the time of payment of the interest, send any notice to the RFC that the disbursement had been made. I knew that they arranged to let the money go out of the RFC on a day certain on account of the taking up of the bonds which was approximately October 4, 1935 and I also knew that every man who had turned in his bonds had been

(Testimony of E. E. Neel.)

promised this additional 4% under the original November 14, 1934 resolution.

The Federal Reserve Bank gave notice that they were ready to disburse the money and by previous arrangement or agreement we provided this money for disbursement to the bondholders. We did not get notification also from the Federal Reserve Bank in San Francisco as to the date to which the interest would have to be figured. The only notice that came to us was from the depositaries. A copy of the letter authorizing the Federal Reserve Bank to make the disbursement went to Merced Irrigation District and that was received by the district.

In addition to the District's paying this sum of \$168,027.31 the District also agreed in the accepting of the resolution of November 14, 1934 that it would pay all of the ex- [321] penses of effecting the arrangement for the taking up of the bonds at \$515.01. The expense was a heavy expense. It is all shown in this statement.

We have prepared a statement complete to June 30, 1938 of the total amount of interest paid by the district to the RFC on advances of the RFC and this is the correct statement.

The statement is introduced as Respondents' Exhibit "E" and is in the Appendix. (p. 764)

The Witness: The District in addition to making provision for the semi-annual interest payment further set apart in a reserve fund a certain amount annually to meet the requirements of the RFC as

(Testimony of E. E. Neel.)

set forth in the resolution of November 14, 1934 and annually we have placed in a reserve fund beginning with 1936 a certain sum of money. The reserve fund was actually set up in 1936 and \$92,200.00 placed in the reserve. The amount of \$92,200.00 arrived at was from the bond schedule that was a necessary accumulation over a period of five years to establish the required reserve called for in the RFC agreement. In other words we began setting up in a special fund account such as that within five years we would have the total reserve fund that was called for in the payment requirement of the proposed 4% bond issue. There have been four deposits made totalling some \$350,000.00 odd dollars. They are made on an annual basis and there have been four of them. I will correct my statement in that the first deposit was made on December 31, 1935. As stated in one of the District securities commission reports as of July 15, 1938 the total amount is \$289,952.90 but there has been an additional sum placed in there since that time and the total aggregate now is \$373,860.64. We have reported to RFC from time to time all payments that have been made into that reserve fund. We have an account in which we credit ourselves with payments on the interest due on the advances made by RFC and the detailed [322] payments that appear on the exhibits that have just gone in evidence are all entered upon the ledger page showing that we are being credited with those

(Testimony of E. E. Neel.)

particular amounts. The billing for those particular sums comes from the Federal Reserve Bank. It is a semi-annual statement showing the amount of interest we owe on the amounts advanced by the RFC.

The cost to date of putting through the cash offer plan has been \$98,888.99. In addition there were expenditures of \$21,417.95, under the State Readjustment Act.

“Mr. Clark: Well, will it be admitted, Mr. Downey, that they were all necessarily incurred?”

Mr. Downey: Yes; I will admit that.

Mr. Clark: In putting through the cash offer?

Mr. Downey: I might say they include everything connected with the cash offer plan, the expense of the committee, expense of the depositaries, the expense of the solicitors who got the bond, and printing of bonds—no; they are not printed. I withdraw that—the expense of election, the expense of bond counsel, Messrs. Orrick, Palmer & Dalquist, my fees, incidental telegrams, telephones, and all matter of office expense connected with that plan.

Mr. Clark: All approved by resolutions of the board of directors of the district?

Mr. Downey: Yes.

Mr. Clark: And you will admit they were all necessary?

(Testimony of E. E. Neel.)

Mr. Downey: Yes.

Mr. Clark: Will it be stipulated that the cost embraced within this total sum of the new bond issue averaged approximately a dollar a bond?

Mr. Downey: You mean the expense of bond counsel?

Mr. Clark: Yes.

Mr. Downey: I would say approximately that, probably [323] a little more than that, Mr. Clark.

Mr. Clark: All right."

The Witness: I may state that included in the \$98,888.99 that \$6,000.00 of that is estimated to carry through to the end of this year.

Prior to the application by the district for the loan from the Reconstruction Finance Corporation, the district was working with the Bondholders Committee first on preliminary investigations and second that there was a first refunding plan adopted which has been referred to in detail. \$76,-162.53 represents the preliminary expenses including the preliminary expenses commencing in April 1931 and up to December 1933. And this again includes the expenses of the committee, depositaries, solicitors, etc. for that period. These are no part of the cost for the cash [324] offer plan and do not include any of the expenses in connection with the establishment, enforcement or acceptance of the

(Testimony of E. E. Neel.)

cash offer plan nor the expenses in the litigation to obtain a decree confirming the plan. Neither do they include expenses of the Bondholders Committee etc. under the first plan.

We have a second refunding bond interest fund in which there was at this time \$676,132.34 and that is separate from the reserve fund. We have in the refunding interest account \$676,132.34 and in the reserve account \$373,860.60.

RFC has not demanded payment of us of any interest coupons on the old bonds at any time. I do not recall that we had any communication with the RFC with respect to fixing the tax [325] rate in September 1934 or in 1935 or in 1936.

“Mr. Clark: Could you make a statement, Mr. Downey, as to whether, in advance of the fixing of the tax rate each year, the RFC was notified and did approve of the proposed tax rate?”

Mr. Downey: I am quite sure they were not advised in advance but they always were advised after the tax rate was fixed.”

Counsel for petitioner stated that in lieu of imposing a tax of a specified amount for the purpose of meeting the requirements of the RFC loan the District allocated a certain percentage of the power revenue for meeting the RFC interest and the reserve.

Respondent's Exhibit “F” is a letter dated October 21, 1938 from Reconstruction Finance Cor-

(Testimony of E. E. Neel.)

poration to Mr. H. T. Sargent, Secretary Merced Irrigation, and is summarized in the Appendix. (p. 764)

Respondent's Exhibit "G" is a letter dated November 3, 1938 and is summarized in the Appendix. (p. 765)

Respondent's Exhibit "H" is a letter from Reconstruction Finance Corporation and is summarized in the appendix. (p. 765)

The respondents read into the record the following letter:

"December 17, 1935.

"Mr. H. P. Sargent, Secretary,

"Merced Irrigation District,

"Merced, California. Re: Docket No. Ref 58.

"Dear Sir:

"Your attention is directed to the formal resolution of this corporation authorizing loan to the above district, and contract with the district which provides, among other things, as follows:

" "In each year the borrower will prepare an estimate of the amounts which it will be required to pay out during each month of the following year, a statement of the cash it then has on hand and an estimate of the cash it will receive during each month of the next year. Such estimates, particularly during the earlier years, shall provide for building up such suit-

(Testimony of E. E. Neel.)

able reserve as may be required by the Division Chief and Counsel for payment of principal and interest in bad years. Such estimates shall be submitted to this corporation within sixty days prior to the [326] date when the rate or rates of assessments or charges are fixed in each year, and the borrower agrees that in levying taxes, assessments or charges for the following year, it will comply with all reasonable suggestions or requests made to it by this corporation in connection therewith.'

"You will note that the above resolution and contract provides that the district shall, within sixty days prior to the date when its annual levy of assessments for all district purposes shall be fixed, submit estimates of its requirements and contemplated levy to this corporation for our approval. If it is contemplated that the levy for the coming year be fixed on or prior to February 1, 1936, may we suggest that these estimates be forwarded us at your very earliest convenience for our approval?

"Yours very truly,

C. Y. DODDS,

"Chief Engineer, Drainage,
Levee and Irrigation Division."

Respondents' Exhibit "I" is a balance sheet for the period ending June 30, 1935, and is set out in full in the Appendix. (p. 766)

(Testimony of E. E. Neel.)

The Witness: Respondents' Exhibit "I" was before the date of the disbursement of any funds by the RFC in August or September.

Respondents' Exhibit "J" is a financial statement and is set out in full in the Appendix. (p. 774)

Respondents' Exhibit "K" is a financial statement and is set out in full in the appendix. (p. 774)

It is stipulated by counsel for the District that statements in like form to respondents' Exhibit "J" were sent periodically to the RFC.

Respondents' Exhibit "K" is similar to Respondents' Exhibit "J" except for the period ending June 30, 1938 and are set out in full in the Appendix. (p. 784)

Respondents' Exhibit "L" consists of three letters fastened together. One dated March 18, 1938 from Frank J. Keenan to Mr. Sargent, Secretary of the District, one dated March 22, 1938 written by the petitioner to Mr. Keenan and the other dated April 7, 1938 written by Mr. Keenan to Mr. Sargent and are [327] summarized in the Appendix. (p. 791)

It is stipulated that it is Exhibit "J" that is referred to in Exhibit "L".

Respondents' Exhibit "M" is a transmittal letter dated June 24, 1938 together with a document designated "Exhibit 'A'" showing a statement of old securities deposited for refinancing and is summarized in the Appendix. (p. 795)

It was stipulated that this particular requisition covers one bond but a similar transaction or similar

(Testimony of E. E. Neel.)

exhibits were sent in connection with all or substantially all of the bonds including those that were taken up in October, 1935. They all carried what we call Exhibit "A" and which is similar to the one offered so it applies to all bonds that same form.

Respondents' Exhibit "N" is a confirmation sent by Reconstruction Finance Corporation to petitioner and is summarized in the Appendix. (p. 796)

It is stipulated that forms similar to Respondents' Exhibit "N" were sent out annually by the Auditors to the RFC.

The Witness: The District now has on hand in these funds that are being maintained under the arrangements with the RFC \$676,132.34 in the interest fund and \$373,860.64 in a reserve fund. All interest has been paid on the RFC loan up to July 1, 1938. These two sums aggregate \$1,049,992.98. We have in our general fund today approximately a half a million dollars. In other words we have on hand today something in excess of \$1,500,000. When we started out this venture we were practically without funds; that is, when we started out to get our refinancing done. There is something over a half million dollars of interest and principal due on the outstanding bonds.

By stipulation excerpts from the minutes of the Board of Directors of petitioner taken from Vol. 8, page 90 [328] was read into the records.

“Upon motion of Director Wood, seconded by Director Wolfe, all bills presented were approved and warrants numbered 25,251 to 35,287, inclusive, in the amount of \$2,765.33 were ordered paid out of general fund, and warrant No. 35,288 in favor of the Federal Reserve Bank of San Francisco, being for interest on money loaned by the Reconstruction Finance Corporation for the period July 1, 1936 to January 1, 1937, in the sum of \$151,889.71 was ordered paid out of the refunding bond interest fund.”

It is further stipulated that the excerpts from the minutes refers to respondents' Exhibit “A” which was the warrant drawn in favor of Federal Reserve Bank.

The following excerpt is taken from page 196 of the minutes, July 13, 1937:

“Whereas, it appears that in the original resolution that RFC authorizing a loan to this district, that in case of litigation affecting the RFC that they may designate an attorney to represent their interest and that the District shall pay the fees of any such attorney designated by them; and

“Whereas, it appears that it was necessary for the RFC to bring suit against the Merced Irrigation District to protect its right under certain bonds and coupons which they are hold-

ing, said bonds and coupons being the original bond issues of said district; and

“Whereas, it appears that the RFC has designated and employed Mr. Morgan Spicer as its attorney in the suit entitled Reconstruction Finance Corporation vs. Merced Irrigation District, filed in the Superior Court of the County of Merced, State of California, on June 12, 1937, to protect its interest in said suit;

“Now, therefore, be it resolved that Morgan Spicer, an attorney of San Francisco, California, designated by the RFC to protect its legal rights in a suit entitled ‘Reconstruction Finance Corporation vs. Merced Irrigation District be and the same is hereby accepted by this board, and said board to pay the attorney his proper fees for services performed, on motion of Director Robinson, seconded by Director Wood, the foregoing resolution was adopted.’”

[329]

It is stipulated that the action referred to in the resolution last quoted from was filed June 10, 1937 in the Superior Court of Merced County by the Reconstruction Finance Corporation through Mr. Morgan Spicer as counsel against the Merced Irrigation District which was an action at law claiming to collect the amount of past due bonds and coupons that the RFC claimed to hold at that time of the old issue and that in connection with that action other bondholders intervened and the action

was finally enjoined by the Court or by virtue of the act in a proceeding under the Irrigation District Refinancing Act.

It is further stipulated that in that proceeding the District did undertake to and did pay the attorneys fees of the counsel for the RFC.

Respondents' Exhibit "O" for identification is described or summarized in the Appendix. (p. 797)

Respondents' Exhibit "P" consists of the petition for debt readjustment commencing on page 10 of Respondents' Exhibit "OO" without the exhibits that follow it.

Respondents' Exhibit "Q" consists of the Findings of Fact and Conclusions of law commencing on page 228 of Respondents' Exhibit "OO".

Respondents' Exhibit "R" consists of Final Decree of United States District Court commencing on page 275 of Respondents' Exhibit "OO".

Respondents' Exhibit "S" is a resolution of petition adopting the so-called cash offer plan and is summarized in the Appendix. (p. 798)

Respondents' Exhibit "T" is a copy of the Petition for Debt Readjustment in the Superior Court of the State of [330] California in and for the County of Merced in the matter of the Petition of Merced Irrigation District for Debt Readjustment number 11675 and is summarized in the Appendix. (p. 809)

Respondents' Exhibit "U" is a resolution adopting the plan of readjustment of bond indebtedness by petitioner July 13, 1937, a copy of which was

part of the record in the proceeding in the State Court referred to in Respondents' Exhibit "T" and is set out in full in the Appendix. (p. 815)

Respondents' Exhibit "V" is a copy of the acceptance of the plan of readjustment of indebtedness by Reconstruction Finance Corporation, the original of which is filed as a part of the proceedings in the State Court under respondents' Exhibit "T" and is set out in full in the Appendix. (p. 820)

Respondents' Exhibit "W" is a printed copy of the notice sent out by petitioner in the proceeding in the State Court referred to in Respondents' Exhibit "T" and is set out in full in the Appendix. (p. 824)

The following is a copy of the opinions delivered by Judge Alfred S. Ross of the Superior Court on March 10, 1938, directing an Interlocutory Judgment in the State Court proceeding referred to in Respondents' Exhibit "T":

"In The Superior Court of The State of California, In and For the County of Merced

"PETITION OF MERCED IRRIGATION DISTRICT, ETC.

"I am inclined to set forth at length my reasoning in reaching a decision in this matter, but have concluded that no useful purpose would be served and will therefore be brief. I will say that I appreciate the problems which

have been involved, and that each party has been sincere and that the presentation of the case has been ably done on all sides.

“I realize the importance of the case to both the district and to bondholders, who, as one counsel put it, have staked their savings, great or small, on these bonds by which the district’s construction was made possible. The rights of all are entitled to earnest consideration. [331]

“The main points of the case presented have been the matter of constitutionality of Chapter 24, Statutes of 1937, the question of the legal position of the R.F.C. as to the bonds it holds, and the general fairness or unfairness of the plan.

“As to the constitutional question, I have reopened the matter, and considered it thoroughly. The arguments both pro and con are very cogent, but I still feel that the statute should be upheld as a proper exercise of the legislative power of the state, the facts set forth in the urgency clause being considered as true and despite what might seem a violation of property or contract rights, but which the legislature apparently felt was a protection of those rights from almost complete extinction if such a statute were not passed.

“As to the R. F. C., I still hold that under the particular contractual arrangements existing here, it is the owner of the bonds it holds subject to the promises and plans contained in

the agreements, and thus comes properly within the statute. Perhaps its ownership can be terminated on repayment of the money advanced by it, but in the meanwhile it owns the whole \$14,000,000 of bonds, and if this plan of re-financing fails, it too may be lucky to get 20 cents on the dollar for them.

“The condition of the district is not rosy. I have examined all the evidence carefully and think the 51 cents proposal is fair. True, this bond defaulting history of this and other irrigation districts has been a disheartening period of California’s financial history and people who put their savings into bonds cannot be blamed for their bitterness. But a half loaf is better than no bread at all, and at the time this refinancing was started and even now the plan proposed seems fair. The bondholders will get at least part of their money back, and the district will be given a further chance to work out its salvation.

“I therefore direct that an interlocutory judgment be entered as provided by section 8 of the Act, and request counsel for the petitioner to prepare findings and judgment and that the latter provide for a continuance of the matter to a future date for final hearing with respect to the value of the bonds owned by the non-accepting holders.

“March 10th, 1938.

“ALBERT F. ROSS,

“Judge of the Superior Court.”

It is stipulated by counsel that the opinion above quoted is the last act that has taken place in that proceeding and that the Findings and Judgment have not been prepared or signed and that is the status of that case now.

Excerpts from the testimony of Mr. Sargent taken at the prior proceeding in this Court was read from pages 367 and 368 of the transcript of that proceeding and is summarized as follows:

The Witness: On January 1st, 1936 we paid the RFC certain moneys. That was 4% on the amount of money disbursed from October 4 to December 31, 1935. By disbursed, I mean the amount of money disbursed by the RFC through the Federal Reserve Bank to the bondholders. We did not receive any receipts for that when the payment was made. We received back the receipted warrant—cash warrant. The RFC had advanced a certain sum of money to the bondholders and taken old securities as security for that loan and under the resolution of the RFC agreement the loaning obligation of the District was to 4% on any money that they disbursed for our account and they billed us for that amount of interest due on the amount disbursed up to the present time and we paid it.

Respondents have closed their case in chief on the RFC issue and thereupon the following occurred:

“Mr. Downey: I have some rebuttal testimony. In rebuttal, your Honor, we desire to show that, quite aside from the legal aspects of these resolutions and contracts which we think determine the respective rights of the parties, and consistently, the RFC has asserted ownership of these bonds. I offer in evidence now a certified copy of the complaint filed by the RFC against the Merced Irrigation District in the Superior Court of the County of Merced, dated June 10, 1937, wherein the Reconstruction Finance Corporation alleges that it is the owner and holder of certain [333] bonds, to-wit, those of the numbers, issue, division, date, dates of maturity and principal amount, set forth in the list attached hereto, marked Exhibit C. Exhibit C lists what we have spoken of here as the old securities held by the RFC up to that date, aggregating a total principal of \$14,640,000. May I have that marked as Petitioner’s Exhibit No. 17?”

Petitioner’s Exhibit No. 17 is a copy of the complaint filed by RFC against petitioner in the Superior Court of the County of Merced dated June 10, 1937 and is summarized in the Appendix. (p. 648)

Petitioner’s Exhibit No. 17 is objected to by re-

spondents on the ground that having a date long after the original transcript it constitutes nothing but a self-serving declaration of the parties thereto and it further appearing that it was filed pursuant to an agreement to pay counsel fees, etc. between the Reconstruction Finance Corporation and petitioner. [334]

Objection is overruled.

Counsel for petitioner stated that the action was filed by Brobeck, Phleger & Harrison, as attorneys for the Reconstruction Finance Corporation and attorneys for certain dissenting bondholders in this action, and they subsequently withdrew as attorneys and Mr. Morgan Spicer was substituted shortly after the complaint was filed. They are apparently the general counsel for the Reconstruction Finance Corporation and that suit was filed apparently without knowledge of the fact that they also appeared in this proceeding as the dissenter. And as soon as that fact came to the notice of the office I was called up and told that they were going to substitute counsel and they did substitute Mr. Spicer.

Counsel for petitioner made the following statement:

“I want to state this, your Honor, that at the time these suits were filed, many of them, by dissenting bondholders, with respect to the statute of limitations on these bonds I called the counsel for the Reconstruction Finance Corporation in Washington and advised him

that these suits were being filed and that the coupons which matured July 1, 1933 were outlawing, and that they should take some steps to protect their rights. I do not know that I first called that to their attention, but I felt that they should know about it; and that subsequently they directed the filing of suit. Now, to the extent that they may have been unaware of the fact that the coupons, under our law, were about to outlaw, they received that information from me. I think I talked to Mr. Satterfield on the long-distance phone about it."

Counsel for petitioner stated further that the district has never appeared in the action. As a matter of fact shortly after the action was filed complaints in intervention were filed in that action by a number of protesting bondholders and then the state reorganization proceeding was filed and then the court ruled that pending the determination of the state reorganization proceedings all of these actions, whether by the Reconstruction Finance Corporation, or the dissenting bondholders, were stayed. It was not an injunction. The law itself provides that upon the [335] filing of state proceedings a plan of reorganization should be temporarily put into effect and that no action in any legal proceeding should be taken inconsistent with the plan, and we came up before Judge Ross and the question was as to whether the Court would pass on those mat-

ters, and it was held in view of the reorganization proceedings, that all of these proceedings were at a standstill. My recollection is that Judge Ross ruled the complaints in intervention were properly filed but that proceedings thereunder were stayed, and the same ruling pertained to the mandate and to the other actions that were pending against the District.

Mr. Cook asked the following question:

“Would this be a fair statement, counsel, that you suggested to the Reconstruction Finance Corporation that it was desirable that they should file this complaint that you have put into evidence; that the suggestion came from you?”

To which counsel for the petitioner replied:

“I certainly did urge upon Mr. Satterfield the advisability of filing suit to protect against the statute of limitations on these coupons. I did not attempt to argue with him as to whether they owned it, because it was unnecessary. He asserted ownership.”

Counsel for petitioner also stated that it was his recollection that at the time the complaints in intervention in the RFC case were argued before Judge Ross that the District by its counsel appeared and resisted the complaints in intervention.

Counsel for the petitioner read into the record the petition by Reconstruction Finance Corpora-

tion filed in the proceedings in this court in the first bankruptcy action under Section 80 and being dated August 26, 1935 by Orrick, Palmer & Dahlquist as attorneys for the Reconstruction Finance Corporation.

Respondents objected to the offer on the ground that it was self-serving, incompetent, irrelevant and immaterial, *ultra vires* and failed to lend substantial support to either the [336] position of the petitioner or respondents. Objection was overruled. The petition being summarized states that the petitioner is an agency of the United States of America; that on or about the 19th day of April, 1935 a verified petition in bankruptcy was filed by petitioner, Merced Irrigation District for confirmation of a plan of readjustment of its debts under bankruptcy act as amended in 1934. That a plan of readjustment had been prepared, accepted and approved by Merced Irrigation District, and the holders of bonds of said district in the aggregate principal amount of \$14,849,000 have consented to and agreed to the plan of readjustment and deposited the bonds with the depositaries appointed for the purpose. That the Reconstruction Finance Corporation has agreed to purchase the outstanding bonds of the district. That Reconstruction Finance Corporation is prepared to, is ready and willing to purchase all of the outstanding bonds of the district which have been deposited with the depositaries and that said Reconstruction Finance Corporation is

likewise prepared to purchase any of the outstanding bonds not heretofore deposited; that the petitioner has by reason of this agreement purchased said outstanding bonds and interest in the litigation. That certain of the outstanding bonds are registered as to principal and interest in the name of the owner of said bonds and upon their purchase said Reconstruction Finance Corporation proposes to cause them to be re-registered in its name as the lawful owner thereof. That Reconstruction Finance Corporation will by the purchase of said outstanding bonds of the District succeed to all the rights, privileges, benefits of the original bondholders; that said Reconstruction Finance Corporation as a creditor affected by the plan, consents to and accepts the plan of readjustment and consents to the proceeding and prays that the plan be approved.

Petitioners' Exhibit No. 18 is a resolution of the Board of Directors of Petitioner waiving the Statute of [337] Limitations as to the bonds described in the action filed by the Reconstruction Finance Corporation and is dated the 15th day of June, 1937 and is summarized in the Appendix. (p. 650)

Petitioner's Exhibit No. 18 was objected to on the ground that it was ultra vires and beyond the power of the petitioner to alter the contract between the bondholders and the [338] District. The objection was overruled.

It was further stipulated as to the status of respondents that West Coast Life Insurance Company

is a corporation engaged in insurance business with its principal place of business in San Francisco, and that this corporation is now and at all the times involved in these proceedings has been the owner and holder of the bonds and coupons mentioned and described in its answer and in the proof of claim and that the bonds and coupons in the answer and proof of claim are unpaid as alleged in the answer and in the proof of claim and were presented for payment as alleged and that all of the bonds held by West Coast Life Insurance Company were presented for certification and were certified as legal investments for insurance funds and trust funds generally and at the time they were purchased they were purchased for a figure approximately at par and that the status of the bonds of the other respondents who appear are as indicated in their respective answers. The stipulation was made subject to correction of any obvious errors.

Petitioners' Exhibit No. 19 apparently was not allowed.

Petitioners' Exhibit No. 20 is a letter from Reconstruction Finance Corporation, dated July 1, 1938, and is summarized in the Appendix. (p. 652)

“Mr. Childers: May I inquire, is that in answer to some of the letters which have gone in?”

Mr. Downey: I can't tell you, Mr. Childers. What I have done, your Honor, there has really been a vast amount of work to this—we turned our files over to these gentlemen. They went

to Merced Saturday and they worked on them, and we worked with them last night. I hesitate to tell your Honor how many letters and documents there are, but they picked out a few which were introduced here today, which are letters either from Mr. Keenan or [339] from Mr. Sargent in which they refer to a loan. It does not give your Honor a true picture of those files at all, because, constantly, as I will show you, they are spoken of as "a purchase, purchase, purchase," with the usual loose nomenclature that arises in any letter that is dictated. Now, to rebut any impression that might be derived from letters of that kind, I am simply taking the files that they have gone over and taking at random a few letters on which the very opposite appears on the face of the letter, not because I deem it material, your Honor—I don't. You can't change a contract by what some accountant, some officer or what an attorney calls it. You have got to determine it by the record, but they have asked to go into this and they have gone into it, and I certainly have the right to go through the files and take out letters which rebut that impression, which I think is a very mistaken impression.

The Court: I did not hear you object to any of that Mr. Downey.

Mr. Downey: No, your Honor, I did not.

The Court: I thought you did not.

Mr. Childers: If your Honor please, here is the thought: That unless these letters have direct reference to the letters that went in, it would seem it would be very remote; it would be quite immaterial; it would be irrelevant; and it would be nothing short of self-serving. But going just a little bit further, we did to some extent—I had the privilege last night of spending a half hour or so with the files. Well, of course, the files are full. Nearly every letter—dozens of them—refer in some instance to “purchase” and in some instances to “loan.” I believe “loan” appears twice to “purchase” once. That is my own impression. But you would have to have the whole file, literally, I imagine, hundreds of letters, wouldn't it be?

Mr. Downey: Certainly hundreds. [340]

Mr. Childers: If you are going into this sort of evidence it would seem it would hardly be proper unless it refers to the letter and the subject matter of the letter that has been introduced in evidence. In that instance, I think we would hardly have the right to object.

Mr. Chase: If the court please, I might call attention to the fact that the letter of Mr. Keenan that I introduced was really introduced as secondary evidence of what the accounts of the Reconstruction Finance Corporation showed; that is, his letter stated that, accord-

ing to their records, they held the \$14,000,000 of bonds as security for the loan of \$7,000,000. I did not introduce it as necessarily Mr. Keenan's expression of interest, but rather as evidence, in the absence of the books themselves, of what the books showed according to Mr. Keenan's letter transmitted in the ordinary course of business.

The Court: Of course, the subject matter of the correspondence was the status of the transaction; that is to say, the matter that the dissenting bondholders sought to bring to the attention of the court was the way in which the transaction was represented by those who spoke for the Reconstruction Finance Corporation. I am inclined to think that the correspondence, unless it is a part of the letters which have already been introduced, is not admissible. If it relates to the letters which have already been introduced, then of course it is admissible, because an isolated letter can not be pulled out by a litigant and presented as an evidentiary entity, without the entire correspondence being before the court. The other side has the right to object to that. But to go farther and to seek to introduce the contrary by this statement, I think they come under the rule of exclusion, especially those that are dated subsequent to the filing of the petition here in June of this year. Any correspondence that is contemporaneous with the letters introduced by

the [341] dissenting bondholders, which is explanatory of statements made therein, would be rebuttal evidence on that; but otherwise, they are injurious and self-serving declarations, especially those that pertain to matters that were written subsequent to the filing of this petition.

Mr. Downey: Then, your Honor, you would feel that I should restrict my offers, either to correspondence that is tied in with their correspondence or that can be shown to be contemporaneous or practically contemporaneous with the purchase of some bonds?

The Court: That would be my thought. Otherwise you are apt to get into a limitless investigation of correspondence between agents of this body, which is not an essentially governmental entity; it is a federal corporation which has peculiar status, which I think has never been just precisely determined judicially—at least, I haven't any knowledge of the status of the Reconstruction Finance Corporation having been definitely determined judicially by any of the federal courts. It has a peculiar makeup; it is quasi public, yet it is a federal corporation. It functions the same as any other corporate entity would function. I do not believe that a letter written by an attorney for the Reconstruction Finance Corporation has any greater efficacy on determining the status

of a transaction of that entity than the attorney for any other corporation has, unless he be an officer who is authorized by proper credentials to speak for the corporate body.

Mr. Downey: Then, your Honor, I will see if there is correspondence that falls somewhere within those limits tonight; and if so, I will offer it in the morning.

* * * * *

Mr. Downey: May it please your Honor, we now desire to offer in evidence the answer of Mr. Keenan of the Reconstruction Finance Corporation to the letter of the district dated June 24, [342] 1938, and which is Respondents' Exhibit M, reading as follows: (Reading letter down to and including "Dear Mr. Sargent.")

Mr. Chase: I would like to at this time enter an objection that this is not responsive to the exhibit which was introduced in this respect, that the exhibit introduced really was the tabulation and the other was just a letter of transmittal.

The Court: The objection overruled.

Mr. Chase: I would like it to be noted that that letter was returned after the litigation was commenced.

(Mr. Downey read the balance of the letter)

The Clerk: Petitioners' Exhibit No. 20 (set up in appendix. (page 652))

Mr. Downey: Mr. Clerk, I think that Exhibit 19 was the one that was offered and re-

jected by the court yesterday. Or am I wrong? What was Exhibit 19? I think I offered it.

The Clerk: This is it.

Mr. Downey: Oh, yes. That was admitted, then.

The Court: That is my understanding.

Mr. Downey: Now, your Honor, we also desire to offer certain typical letters between the Reconstruction Finance Corporation and the Merced Irrigation District which, in accordance with your Honor's ruling yesterday, have been narrowly restricted and confined in this: They are limited to letters written contemporaneously with respective disbursements of the Federal Reserve Bank for bonds of the district. They relate to bonds which are listed upon what Mr. Chase yesterday accurately referred to as Schedule A. Mr. Chase's Exhibit M yesterday was a letter transmitting what we call Schedule A. As these bonds are taken up, a schedule is sent in by the district to the Reconstruction Finance Corporation, listing the bonds, and each of them is numbered, they being schedules 1, 2, 3 and 4 but all being Schedule A. The letters which I am offering, your Honor, are the letters sent by [343] the district to the RFC and the answers of the RFC acknowledging the Schedule A, and are similar in character to Exhibit M on behalf of the respondents and are contemporaneous, or

practically contemporaneous, with the disbursements.

The Court: May I see Exhibit M? Proceed.

Mr. Chase: Is there an offer of those as yet?

Mr. Downey: I am offering these letters.

Mr. Chase: All right. To which offer, your Honor, we desire to object on the ground they are incompetent, irrelevant and immaterial, and that Exhibit M was offered for the purpose of showing accounting, Exhibit I accounting paper which was sent with all of these bonds. I do not think it is necessary to put in every letter of transmittal and every acceptance. I do not think they are particularly material one way or the other, and are self-serving, incompetent, irrelevant and immaterial.

The Court: Objection overruled."

Petitioners' Exhibit No. 21 is a group of letters and summarized in the Appendix. (p. 653)

It is admitted by counsel for petitioner that the only election that was held in the district at which any proposal was voted upon for the approval of a contract between petitioner and RFC is the election mentioned in the complaint contained in the judgment roll or copy of judgment roll which was introduced in evidence (Exhibit 14) and that was the only election relating to this particular plan. [344]

At this point counsel for petitioner rested his case so far as the relationship of the district to the

RFC is concerned and respondents without waiving the pleas in abatement, in bar or for want of jurisdiction moved to dismiss the petition and for a determination that the Reconstruction Finance Corporation is not a creditor materially affected by the plan on the ground of insufficiency of the petition, insufficient evidence to show that the Reconstruction Finance Corporation is creditor affected by the plan or entitled to vote as a creditor upon the proposed plan and that the evidence shows that the Reconstruction Finance Corporation is a creditor which cannot consent because it has received an illegal consideration and preference to obtain its consent as it is now receiving interest upon its claim which no other creditor is receiving; on account of the collusion of the parties shown by the effort of the district to aid this creditor to establish its claim in preference to others; and on the ground that the plan cannot be confirmed because it now appears that the consent of two-thirds of the creditors effected by the plan cannot be obtained.

The motion was denied without prejudice to a review of the ruling at the conclusion of all of the testimony if it is deemed to be erroneous.

E. E. NEEL,

being recalled as a witness on behalf of petitioner, being duly sworn testified:

I have prepared an exhibit showing the present debt structure of petitioner under the old bonds of

(Testimony of E. E. Neel.)

\$16,190,000 assuming now that that debt is existent. None of the bonds and coupons of the old securities of \$16,190,000 have been taken up or paid since July 1, 1933. We can forget all of the obligation on the bond debt up to July 1, 1933 and all of my statements are so predicated. And since July 1, 1933 there [345] have been no payments on coupons or bonds. All obligations at the present time with respect to both maturing bonds and maturing coupons are paid or taken care of with the exception of the bonds and coupons due July 1, 1933 and subsequent. The interest coupons from July 1, 1933 to and including July 1, 1938 totaled \$5,194,925 and the bond principal in default commencing with January 1, 1934 totals up to July 1, 1938 \$386,000 and that makes a total of \$5,580,925.

The respondents objected to the introduction of any testimony which tends to show that the indebtedness of the district is based on \$16,190,000 on the ground that it is incompetent, irrelevant and immaterial because the evidence does not show that that is the indebtedness of the district. The objection is overruled and the Court states that the objection may be considered to be interposed to each question and unless otherwise noted the same ruling is made after each question on that point.

The Witness: Many of the coupons and bonds have heretofore been presented for payment and marked "not paid for want of funds" and have been regis-

(Testimony of E. E. Neel.)

tered for payment. The accrued interest on the registered bonds and coupons to December 31, 1938 amounts to \$1,066,890. The installment of bond interest which would mature according to the terms of these old bonds on January 1, 1939, July 1, 1939 and January and July 1, 1940 inclusive of maturities up to and including July 1, 1938 will amount of \$7,035,205. In addition to that the principal maturities in 1939 and 1940 including the \$386,000 principal already in default amounts to \$646,000. That would make a grand total of \$7,681,205. Commencing with October, 1935 and continuing right through to the present time the District has paid to the Reconstruction Finance Corporation 4% on the liquidating value of the bonds taken up. [346]

Question:

“Now, then taking the total of all these payments to the Reconstruction Finance Corporation from October, 1935 to date, and including the payments which would be made in January, 1939 and July of 1939 what would be the amount?”

The respondents objected to the question as not properly setting forth the situation and tends to vary the terms of the written contract that the petitioner has relied upon, incompetent, irrelevant and immaterial. The objection was overruled.

The Witness: The payments to Reconstruction Finance Corporation including payments which

(Testimony of E. E. Neel.)

would be made in January 1939 and July 1939 amount to \$1,127,485.00. Based upon the figures which I have given and the gross value of the tax rolls and the amounts with respect to which I have testified the tax rates required to be levied next September under Section 39 of the Irrigation District Act would be \$68.83 for each \$100 valuation.

Petitioner's Exhibit No. 22 is the exhibit prepared by Mr. Neel and is set out in full in the Appendix. (p. 660)

The Witness: The figure I used for the gross rolls was \$11,245,645. The total amount to be levied would be \$7,553,658. I have used the estimated power income at \$500,000 which under the present interest requirement would increase our present balance in the refunding fund to approximately \$1,200,000. That is based on the \$3.00 rate which was actually levied in September, 1938. The last date when the district levied the so-called legal rate was September, 1932 and that was \$8.90 per hundred valuation and resulted in a delinquency at the time of 62.80% and that was the last tax rate that was levied for the purpose of servicing the outstanding bond issue. After that the district took advantage of what is known as Section 11 of the District Securities Commission Act providing for the levy of a rate based on the [347] ability of the land to pay and all tax rates since that time up to

(Testimony of E. E. Neel.)

and including September, 1938 have been based on that legislation. There has been no levy since 1932-33 for bond service. The tax rate in each of the years following the legal rate in 1932-33 of \$8.90 was for the year 1933-34 \$1.00; 1934-35 \$1.70; 1935-36 \$3.00; 1936-37-38 \$3.00; 1938-39 \$3.00. The tax rate including the tax rates as far back as 1928-29 have been placed graphically on this chart. The rate for 1928-29 was \$6.00. That included bond service. And the rate for 1929-30 was \$6.00. That included bond service. And the rate for 1930-31 was \$5.90 and the rate for 1931-32 was \$5.60 and the rate for 1932-33 was \$8.90. This chart represents graphically the rates for the period testified to together with the line indicating the estimated rate of \$68.82 which according to my testimony would have to be levied next September if the District were servicing the outstanding bonds.

Petitioner's Exhibit No. 23 is the chart from which the witness has been testifying and is set forth in the Appendix. (p. 662)

The Witness: At the present time, that is to say

(Testimony of E. E. Neel.)

November 1, 1938, the total amount in default of both bond principal and interest and interest on the registered coupons, is \$6,585,812. I have caused a graph to be prepared showing the entire \$16,190,000 bond issue graphically as to the different maturities. The entire block shown on this graph, irrespective of color, would indicate the bond principal and bond interest as it would mature under the \$16,190,000 bond issue. That shows that the peak of payment including both principal and interest under that bond issue would not be reached until 1951. The graph shows that the bond principal is going down as the bond principal is being retired. But there is an ascending scale of payment required under the bond issue and would not reach its peak as I said until 1951, and thereafter there [348] would be nearly as high a peak in 1962. Still referring to the graph there has been indicated in this square marked "interest paid" in yellow, the total amount of interest paid by the district on that bond issue superimposed upon the block representing the entire issue. That shows interest paid up to July 1, 1933. The interest in default is shown by pink color and the principal paid is shown in green and the principal in default is shown in kind of red. The total bond service annually, principal and interest, on July 1, 1933 was \$954,400 and that compares with what would have been a peak had the bond service been met in 1951 of \$1,280,700.

(Testimony of E. E. Neel.)

The chart graph from which the witness has been testifying is offered in evidence as Petitioner's Exhibit No. 24 and is set out in full in the Appendix. (p. 665)

The Witness: I testified that the delinquency in the last legal rate levied in 1932-33 was 62%. That delinquency has been materially cut down since the levy of the low rates and there has been put into effect a plan of paying delinquent installments on a ten year basis.

I have a complete record of tax levies and the resulting delinquencies and the delinquencies that have been made up with particular reference to delinquencies that have been met after the \$8.90 rate and subsequent to the \$1 and \$3 rates. I have on this exhibit of the delinquent tax rolls as of November 1, 1938 a notation showing the tax rate from 1928 to the present time after the column showing the valuation of the land in the district. I show the total amount of the levy for each year based on that tax rate and the collections to the delinquency date and the amounts delinquent the last Monday in June according to amount and percentage. In the next column I show the delinquency collection from the original date of delinquency right up to the present time. That includes many of those ten year installment payments. [349] I then show the present uncollected amount—the percent still remaining un-

(Testimony of E. E. Neel.)

collected—and I have added to that the penalties and costs. I then show a column of land deeded; that is where the district has taken the land and I deduct that from the uncollected balance and the penalties and costs are dropped. In other words, the lands take the place of the delinquent amount and that leaves in the final column the amount delinquent as of the present date.

The plat or compilation from which the witness has testified was offered in evidence as Petitioner's Exhibit No. 25, the pertinent parts of which are set out in the Appendix. (p. 667)

The Witness: I have prepared a balance sheet for the period ending November 1, 1938.

The balance sheet is offered in evidence as Petitioner's Exhibit No. 26, and is set out in the Appendix. (p. 669)

The Witness: I have here an exhibit showing all income received since the commencement of operation of the power house from the power contract. The district impounds water at what is known as Exchecquer Reservoir and the water is passed through a power house before coming to the irrigation canals, generally speaking. The district entered into a contract with the San Joaquin Light & Power Corp. to sell power at a rate of 4½ mills per kilowatt hour. That contract was for a period of twenty years with an option of renewal for twenty years more on the part of the district. The twenty

(Testimony of E. E. Neel.)

years will be up in 1944 and the option renewal period will be to 1964. I have tabulated the total of the income annually that has been received from the sale of power. The first year of complete operation was 1927. The dam was closed in 1926 and we did not get the full run-off for that year. The minimum income [350] from power for the year 1931 amounted to \$95,917.21. In the preceding year of 1930 the amount was \$308,931.19 and the amount in 1929 was \$296,412.57. From 1928 on the amounts were for the year 1929, \$296,412.57; for the year 1930 \$308,931.19; for the year 1931, \$95,917.21; for the year 1932, \$605,230.18; for the year 1933, \$316,924.89; for the year 1934, \$191,936.39; for the year 1935, \$551,114.49; for the year 1936, \$584,429.64; for the year 1937 \$625,363.45; and for the year 1938, \$707,203.96. The year 1938 has been the biggest year and the year 1931 was the poorest year. The average of the yield for the years of full operation is \$444,939.33 and that is shown on the exhibit.

The exhibit from which the witness has been testifying is offered in evidence as Petitioner's Exhibit No. 27, and is set out in the Appendix. (p. 671)

The Witness: The amount annually received from the sale of power as I have given and as stated on this exhibit represents the gross amount received for the sale of power in each of those years. There are certain operating expenses. The power operating expenses average about \$22,000 a year and the depreciation on the power plant as fixed by the

(Testimony of E. E. Neel.)

Federal Power Commission amounts to approximately \$22,000 per year on the power department only, not including the dam. Including the dam it amounts to about \$61,000 plus. Taking the average of \$444,000 gross amount for the twelve year period and deducting operating expenses of about \$22,000 and something like \$22,000 on depreciation we have a net average of about \$400,000. Depreciation on the dam proper is about \$38,000 in addition to the \$22,000 on the power house.

I have an exhibit here showing the properties which have been deeded to Merced Irrigation District on account of non-payment of delinquent taxes. This exhibit shows that a total rural acreage of 36,588 has been deeded to the district and 1550 of city [351] and town lots. The exhibit also shows property sold. We have sold out of the 36,000 odd 6,429 acres of the rural acreage and 275 of the town lots. These have been deeded to the district and subsequently sold and we still hold 30,159 acres of rural acreage and 1275 of town lots.

The exhibit from which the witness testified is introduced in evidence as Petitioner's Exhibit No. 28, the pertinent parts of which are set out in the Appendix. (p. 676)

The Witness: As the lands passed to the district if we were levying the legal rate under Section 39 it reduces the valuations in the tax rolls by the amount that has been taken off by reason of the

(Testimony of E. E. Neel.)

deeding of the property, and that pyramids. The lands still on the tax roll are required to take up the obligations of lands that pass off the tax roll. In connection with the estimate of the tax rate that would have to be levied to service the old bond issue next September, \$68 and a few cents, there is no pyramiding of the tax delinquency. That was not taken into consideration. Had the legal rate been continued after the \$8.90 which produced a delinquency of some 62% there is a possibility that it would run up into the thousands of dollars tax rate per hundred valuation, if the value of those lands deeded were deducted from it.

The respondents moved that the last question and answer be stricken as purely speculative, without foundation and only a guess, upon which motion there was no ruling.

The Witness: I estimated that the tax rate for 1933-34, if the legal rate had been levied just for the year following the 62% delinquency, would have been \$16. That is my recollection. I haven't the figures with me. It would have continued to pyramid. Projected ahead for three years you would arrive [352] at the sixty some dollar rates estimating the delinquencies on those succeeding higher rates. In other words, as the lands were taken off the rolls those that remained on the roll would be pyramided.

Petitioner's Exhibit No. 29 is the 1933 report of the Districts Securities Commission, and is set out in the Appendix. (p. 678)

Petitioner's Exhibits No. 30 and 31 are the 1934 and 1935, respectively, reports of the Districts Securities Commission, each of which is in the same form as Petitioner's Exhibit 32, and are referred to in Appendix (p. 713).

Petitioner's Exhibit No. 32 is the 1936 report of the Districts Securities Commission, and is set out in the Appendix. (p. 714)

Petitioner's Exhibit No. 33 is the 1937 report of the Districts Securities Commission, and is described in the Appendix. (p. 732)

Petitioner's Exhibit No. 29-A is the 1933 Order of the Districts Securities Commission, the pertinent parts of which are set out in the Appendix. (p. 711)

Petitioner's Exhibit No. 30-A is the Order of the Districts Securities Commission for 1934, and is described in the Appendix. (p. 713)

Petitioner's Exhibit No. 31-A is the order of the Districts Securities Commission for 1935, and is described in the Appendix. (p. 713)

Petitioner's Exhibit No. 32-A is the 1936 order of the Districts Securities Commission, and is described in the Appendix. (p. 732) [353]

Petitioner's Exhibit No. 33-A is the 1937 order of the Districts Securities Commission, and is described in the Appendix. (p. 732)

(Testimony of E. E. Neel.)

Cross Examination

The Witness: I have a series of the annual financial statements of the District starting with the year 1931 and including the succeeding years down to 1938 and have pinned these together so that they can be offered collectively.

Respondent's Exhibit "X" is the group of statements above referred to, and are set out in the Appendix. (p. 827)

The Witness: The delinquency on the tax levy of 1932-33 which was \$8.90 per hundred was \$721,-188.56 as of the last Monday in June, 1933. That delinquency has been reduced as of November 1, 1938 to \$216,252.07.

After the levy of this rate of \$8.90 the district applied to the California Districts Securities Commission for leave to have its tax rate fixed at a figure that the commission might prescribe and the district discontinued the payment of any interest or principal falling due on or after July 1, 1933. On January 1, 1933 there was a certain delinquency on bond principal and bond interest after applying the money in the bond fund and collected to date. The amount of delinquency of principal and of interest on the maturities of those bonds on December 31, 1932, after the application of the bond fund money, was \$369,715. That is less than the difference between the highest delinquency on petitioner's

(Testimony of E. E. Neel.)

Exhibit No. 25 and the sum of \$216,282.07. There were heavy collections after December 31, 1933 on the levy of \$8.90 and the aggregate of those collections on that particular levy which were made over a [354] period of a year and a half following January 1, 1933, exceeded the total bond delinquencies, principal and interest, that existed on December 31, 1932.

“Q. The district then, after December 31, 1932 and after its decision to go into default or, rather, to make levies in accordance with Section 11 of the California Districts Securities Commission Act, took out of its bond fund any and all moneys levied for the purpose of paying bond principal and bond interest and simply used those moneys for general purposes and purposes other than paying the maturities of the principal and interest upon the bonds?”

A. That is correct on bonds and coupons maturing July 1, 1933 and subsequently.”

The approximate interest maturity of July 1, 1933 was \$454,200. When the District made the levy for 1932-33 it levied in the light of the maturities upon the principal and interest of the bonds which would occur on December 31, 1932 and also on July 1, 1933. Then instead of using the moneys which came in as a result of this levy and retiring the maturities of July 1, 1933, the District simply

(Testimony of E. E. Neel.)

emptied its bond fund and kept it empty thereafter except for the limited purpose of meeting the maturities of January 1, 1933 and prior thereto. I appreciate that a part of maturities of principal and interest held by the dissenting bondholders are maturities of July 1, 1933 and following, and nothing by way of interest has been paid to any of these dissenting bondholders on their bonds beginning with July 1, 1933. In addition to the moneys that came in after December 31, 1932 upon this levy of \$8.90 there were additional moneys collected upon the levies made for the three preceding years which moneys were delinquent on December 31, 1932 and these financial statements which have just gone in evidence for the years beginning with 1931 and running down to the present time tabulate year by year the payments of the delinquencies on the levy, doing that successively for each preceding year; in other words, we find in the financial statement reported each year [355] the amount of the cash collected upon the levies that had previously been made by the district for the previous year. Those moneys that came into the district by way of payment upon delinquent levies were simply taken by the District and used for general purposes after the purpose for which the original levy was made had been taken care of. That explanation, however, does not apply to the levy that was made for the purpose of paying interest that might fall due on July 1, 1933

(Testimony of E. E. Neel.)

and that amount is set up as \$454,200. That does not mean that the whole amount of \$454,200 would be available for servicing these bonds if it had not been used for general purposes because we have only collected \$320,272.93. The \$320,272.93 was placed in the general fund and if it had been placed in the bond fund it would have been available for use in retiring maturities upon these bonds of July 1, 1933.

The Witness: I have made a computation for the purpose of determining the total amount that would be in the bond fund today as the result of the collections on the levy of 1932-33 after December 31, 1932 and as a result of the collections of delinquent taxes that were delinquent as of December 31, 1932 under prior levies which embrace bond service and find the total to be \$717,932.50 which includes \$320,272.93 of 1932-33 collections. That represents all collections of all delinquencies whether or not the purpose of the levy had been fulfilled and completed. These financial statements that we get out annually also show the receipt of income from land that has been deeded to the District for delinquency of these taxes, and the district after getting title to these lands proceeds to rent them. The rental is received from the properties which have been taken upon tax tilte. The amounts are all given in the annual statement. None of that money that was received by the Dis-

(Testimony of E. E. Neel.)

trict from these lands taken in at delinquent sales was allocated to the bond fund [356] after December 31, 1932. The whole of the rental of the land has been placed in the general fund. A very substantial portion of the rental from the sale is for the delinquency in meeting the tax as an entirety, the tax levied to service the bonds and for general purposes. The sale is for the lump sum delinquent. A substantial portion of these lands were taken in for delinquency in meeting the assessment or the tax for 1932-33. I have made no computation to show how much of the rental that has been received by the District was yielded from lands that were taken in by the district for the default in meeting the tax levy of 1932-33. The greatest delinquency occurred in connection with that levy of \$8.90.

Question:

“What proportion, about, of all the land was taken in for failure to meet that levy?”

Answer:

“Well, the sum was \$148,782 in relation to a total of \$656,245.”

When the land is taken in by the District for failure to meet a particular levy then that land disappears from the tax roll and no longer responds to any obligation to service the bonds. No estimate was ever made by me as to the amount of the yield from these lands that ought to be paid into the

(Testimony of E. E. Neel.)

bond fund. No resolution was ever adopted by the Board of Directors of the District as to the use of this income from the land. The yield from these lands shown in our financial statement is net yield. That is, it is the rental that is paid to the district by the man who rents the land. I would like to correct my statement on the Board of Directors authorizing the use of that money from the land income in that it becomes a part of the total incomes which are used in connection with setting of the tax rate. In that sense, they do approve the use of it. As an estimated income in connection with setting the rate and by virtue of the [357] fact that we did take that into consideration the tax rate was that much less for bond service and everything else.

I have no direct knowledge as to whether or not a substantial portion of the land within the district was, when the district defaulted, subject to mortgages and deeds of trust.

Counsel for the petitioner stated that there were unquestionably heavy mortgages there and that it is undoubtedly true that at the time the district went into default or for some time prior thereto the holders of mortgages and deeds of trust were in many instances compelled to pay the taxes upon the land.

At this point a portion of the testimony of this same witness given in the trial of the action in the state court, as follows:

(Testimony of E. E. Neel.)

The Witness: The figures relative to the levies made by the various political subdivisions that lie within or which overlap Merced Irrigation District furnished to the California District Securities Commission for the 1936 report were obtained by me from the County Auditor and the district accepted them as being correct and sent them in to the California Districts Securities Commission and cooperated in the creation of the report which came back from the Commission. I was the Auditor during the making of all the reports that came back from the Securities Commission and I am familiar in a general way at least with these reports. Referring to page 11 of the report to the Securities Commission it is the position of the district that of these road districts the bonded indebtedness aggregating \$256,053 is upon lands of Merced Irrigation District. The truth of the matter is that these bonds which are referred to at the top of page 11 of the petitioner's exhibit are pretty much covered over the whole of the lands within the district exclusive of cities. So far as I know they cover the poor land and the good land. I haven't in mind just the exact [358] portions of the district those particular bonds cover. They are pretty well scattered. It is a fact well known by all of the officers of the district that when this district became in financial distress and commenced to go into default the landowners in the district were having trouble meeting all of their taxes, county and district taxes as well as the taxes

(Testimony of E. E. Neel.)

of the Merced Irrigation District. And there were very heavy delinquencies in the meeting of County taxes generally. When we made these earlier reports or when these earlier reports were made back to us they showed this road district bond indebtedness as it was at that time. Then we have indicated in these reports that while this district has been in this so-called bankrupt condition these bonds have been reduced, paid off to the extent indicated by comparing this final one of these reports with the earlier ones. The truth is that the entire district land, good or bad, is all subject to payment of this bonded indebtedness of the County. It is a county indebtedness and in the case of these bonds also, these county bonds, that is, these are bonds that are serviced by the levying of taxes upon a valuation assessment that we are talking about.

According to these figures there has been a gradual reduction of the bonds of these road districts since the commencement of these reports back to the District and the County bonds have been reduced from a figure above a million to the sum of \$822,000. These figures are made from records and relied upon by the district and accepted by the district as being correct. At the top of page 8 of petitioner's Exhibit No. 7 it was decided that of these \$822,000 in bonds, \$106,800 may be considered as being a lien upon the district land and that decision is based upon the percentage of valuation of the land outside the boundaries of the district and valuation of the land

(Testimony of E. E. Neel.)

inside the [359] boundaries of the district. The percent would be something like four to one. I think that was based upon the percentage of acreage—I am not quite clear.

Referring to page 9 it is my impression that the payment there concerning the 13 school districts within that, overlap Merced Irrigation District and have outstanding bond issues that might be said to be a lien upon the land in the district at the present time in the amount of \$107,600 out of a total which is given; that the payment there was also made upon the basis of the values which are actually assessed and taxed in paying these bonds. As regards these school district bonds, that bond indebtedness has been paid off in full down to the point indicated in the report of 1937 since this district became so badly in default. In other words, the principal has been met and the interest today is being met on all of these other bonds that are a lien upon the lands in this district. These reports mention that there are three cities within the district, Livingston, Atwater and Merced. The City of Merced is composed of about 7,000 people and Atwater is around 1500 and Livingston is about the same or a little smaller. (This concludes the testimony of Mr. Neel as read from the record).

The Witness: There was some increase in the payment of taxes subsequent to the time of the enactment by the legislature of relief legislation giving the mortgagors and trustors under deeds of

(Testimony of E. E. Neel.)

trust more time within which to pay. Our report for 1934 shows a most astounding increase where it shows the delinquent taxes came in amounting to \$290,732. At this point testimony of Mr. H. P. Sargent as taken at the first trial in this court was read into the record and it was stipulated that the answers as read both as to Mr. Sargent and Mr. Neel (already read) be taken in this case. [360]

Testimony of

MR. SARGENT:

My testimony was, I think, that unless the District Board would cancel the penalties and the interest and make some sort of a new arrangement for handling of the back liens already on their properties, that they would not continue to pay. Then we might take a deed. It seemed to be the view of the mortgagee and the lender or trust deed holder that he regarded the situation as so desperate that he would just let the land go unless we made a reduction in the charge against the land in some form. We received that complaint through letters and orally.

The Bank of America does not complain. They just simply go ahead and do what they see fit to do with their properties and on such properties as might be subject to deed I asked whether they wanted to save it or not. They go on and pay taxes on certain pieces and on certain pieces they say, "We have

(Testimony of H. P. Sargent.)

no further interest in it." It do not think the Bank of America is the largest lending institution in the County of Merced but it is the largest bank, and I imagine it had a considerable amount of money, as has been testified here, loaned on the land in this district. The First National Bank of Merced is a local bank and it does some lending on lands in the District. And then there is a building and loan association or two at Merced loaning money upon real property and private lending institutions and some life insurance companies and fire insurance companies that have money loaned out on land in the district and pretty generally complaints were coming from these lenders that these rates were high and they were all more or less grumbling and indicating that if we did not cut these rates they were going to quit paying taxes. (This ends the testimony of Mr. Sargent as taken from the record in the other case as above indicated.)

Testimony of

E. E. NEEL

Mr. Neel: (testimony resumed) [361]

None of the interest or penalties payable in connection with the redemption from tax sales of land that went delinquent was put in the bond fund of the district but were put in the general fund. These moneys are also shown in the figures set forth in these annual financial statements. The moneys that belong to these various funds were deposited in

(Testimony of E. E. Neel.)

banks and at all times when the amounts on hand were substantial the banks paid interest upon the money on deposit on the daily balance. The interest money from the banks were placed in the respective funds to which the interest accrued. We never made any distinction. The accrued interest on fund balances has always gone into the fund on which it accrued. After June 30, 1934 none of the collections on the 1932-33 tax levy were placed in the bond fund. After June 30, 1934 the interest on fund deposits was placed in the general fund and were deposited in the general fund in the bank and any interest that accrued on them went into the general fund.

We have today paid practically all of the maturities on these bonds accruing prior to July 1, 1933. I might state that we completed payment of all of the January 1, 1933 bond interest coupons and bonds on June 30, 1934. The District paid in full roughly \$172,600 coupons and bonds that accrued prior to July 1, 1933 and which were unpaid on July 1, 1933. A considerable portion of the bonds and coupons representing that total had been registered for non-payment. After July 1, 1933 if a person happened to hold a registered matured bond that matured prior to that date he was paid off in full of principal and interest at 7% per annum from the time of registration and in the case of coupons that have been referred to they were paid

(Testimony of E. E. Neel.)

off in full together with interest at 7% per annum. All of the coupons and bonds which matured prior to July 1, 1933 were paid off in the respective [362] order of their presentation for payment and not ahead of coupons which matured July 1, 1933 but which were registered after the coupons of January 1, 1933; but we never paid off any coupons maturing on or after July 1, 1933. We never have paid a coupon that matured prior to January 1, or prior to July 1, 1933 outside of its regular order of presentation for payment. The \$170,000 that was referred to which came into the fund as late as June 30, 1934 was paid out on coupons on the date of the order of presentation, all of these coupons having matured, however, January 1, 1933 or prior thereto. To make this entirely clear all those who voluntarily accepted the cash offer plan received 4% interest per annum from the time that they made their bonds available for refinancing to that date of October 3 or 4, 1935 provided the bonds were put in a depository's hands. The plan likewise makes no provision for compensation on account of the delay from October 3, 1935 down to the present time so far as the dissenting bondholders are concerned even though those who did assent received their money on October 3, 1935. In other words, there is a period in there of two years and a half that those who took the money voluntarily have had the use of the \$515.01 There is a very small amount unpaid on bond maturities of the district maturing

(Testimony of E. E. Neel.)

prior to July 1, 1933. It amounts to \$17,905. It is a part of this cash offer plan that that amount of money shall be paid in full with interest from the time of registration of the bonds representing that total amount.

The district carries on its books the Exchequer Dam, reservoir and water rights connected therewith at \$16,900,548. That includes the reservoir, the dam, power plant and water rights connected therewith. That is the cost of the dam and the power house; that is, the Upper Project and includes the relocation of the Yosemite Valley railroad. That includes the total expenditures [363] or costs of the works of this district and includes several hundred miles of canal. The figure as representing the Upper Project is \$11,459,696.49. That is the cost for the construction of the works, and in that is embraced the cost of moving the railroad which was approximately \$5,500,000. That is the figure for the original cost of the project. We carry a reserve which has accrued annually which totals now \$709,338.83 as a depreciation reserve. We carry on our books the remainder of the physical properties of the district at approximately \$6,000,000. That represents, generally speaking, the canal system, rights of way, and irrigation facilities for applying water to the land, including pumping plants and drainage plants, and so forth.

The occasion for the cutting of the assessment from a figure of approximately 20,000,000 to a

(Testimony of E. E. Neel.)

figure of approximately 11,000,000 or 12,000,000 was that in 1932, due to considerable changes in valuation placed on the properties, the assessment rolls were reduced by approximately one-third. The first material reduction was in 1932-33.

The basis of assessment for the district is the land alone. We do not assess the improvements, such as orchards or permanent crops like alfalfa.

The balance sheet which is petitioner's Exhibit No. 26 purports to be a true statement of the condition of the district assuming that the debt of the district constitutes the old securities; that is, the old bond account. In the liability account the amount of \$5,076,185 includes all outstanding matured bond interest coupons, and also includes all coupons which have matured since July 1, 1933. No where in this balance sheet is shown any credit against that item for the interest which has heretofore been paid to the Reconstruction Finance Corporation at the rate of 4% on its advances. The amount heretofore paid to Reconstruction Finance Corporation at the rate of [364] 4% on its advances amounts to a little in excess of \$800,000. It was paid on bond interest expense, or rather as an interest expense account.

Largely speaking, a large portion of this item of \$1,400,887.54 is accrued interest on registered coupons. There is just a few thousand dollars on registered bonds. Treating it as accrued interest on registered coupons from the date of the maturity

(Testimony of E. E. Neel.)

of the coupons it includes interest at 7% on all coupons held by the RFC maturing subsequently to January 1, 1933 regardless of any payments which have been made to the RFC on account of interest. There is no where on the balance sheet shown that item of credit against the item of \$1,400,887.54.

In addition to those items there was interest paid at 4% to depositing bondholders under the first plan up to the date of disbursement October 5th. The amount of that interest is \$168,582.00. No where on this balance sheet is there reflected the credit items for the payment of that amount.

In the liability account the amount of \$676,132.34 refunding bond interest surplus is the amount actually held by the District in cash at the present time to meet future interest requirements on the RFC loan and that is in addition to all of these other items we have talked about and the item of \$373,860.64, being the refunding reserve surplus, is an additional amount of cash which is held in the district's bank account as a reserve against future principal payments on the RFC loan, and that is in addition to these other amounts. Those aggregates reserve for future payments on the RFC loan amount to \$1,050,000. Assuming on this balance sheet that there are outstanding old bonds of \$16,191,000, those two items would be a proper credit against the bond deficit account or bond surplus account deficit of \$6,468,862.74. [365]

(Testimony of E. E. Neel.)

Referring to the same balance sheet this item of tax sale certificates of \$206,096.93, the larger portion of that represents tax sale certificates on land which is under the partial payment plan, that is, under which the indebtedness is being paid off in ten annual installments. I can't say just the amount—I haven't those figures—I can't say that it is a major portion.

Referring to Petitioner's Exhibit No. 25 which is the statement of delinquent tax rolls as of November 31, 1938, and referring to the column showing percentage of delinquencies on the last Monday in June which will be the sixth or seventh column, those delinquencies represent entirely the delinquent percentage as of the date when the tax first became delinquent in each case; that is, at the termination of the tax collecting period in each year and the delinquency at that time was at the lowest point at which it had been at any time in 1937-38; that is 6.84%. The present delinquency for the year 1936-37 levy is \$3.80. The lowering of the delinquency represents substantially the payments which have been made since the first delinquent date in redemption, and it is normally expected that some collections will be made and some are always made of those delinquent taxes after the delinquent date.

The maturities and the interest coupons due and the interest on the interest coupons on the unde-

(Testimony of E. E. Neel.)

posited bonds at the present time amount to \$623,032.11.

Not including the general fund levies the delinquencies of landowners in the district that have been paid up to date in the district are \$717,932.50 and those funds were not placed in the bond interest fund.

If we assume that the debt to the RFC at the present time consists of this \$7,500,000 odd that has been disbursed pursuant to this plan then the obligations of the district [366] are current at the present moment with the exception of the undeposited bonds. The liability would be the sum of the RFC debt plus the other outstanding bond obligations, and that is the total of all outstanding obligations on the assumption that we have made. The total debt would be about \$9,500,000 and that would be the principal and the interest on the loan. The only items besides those would be the accrued interest on the outstanding bonds other than those held by the RFC.

This proposal is to liquidate the outstanding bond indebtedness upon the basis of \$515.01 per thousand dollars of principal. That is the cash offer plan as it stood in January, 1933, or treating it as retroactive as of that date. That was the plan at that time.

At this point over the objections of respondents on the ground that it is incompetent, irrelevant and

(Testimony of E. E. Neel.)

immaterial, counsel for petitioner read into the record the preamble of emergency setting forth the facts as declared by the legislature in enacting Chapter 24, Statutes of 1937 as follows:

“That many of such districts were organized during a rapid period of expansion and inflated values and that they issued bonds in excess of their capacity to pay. That during the period of world-wide depression many of these districts became increasingly unable to meet the obligations of their bonded indebtedness, including the payment of interest thereon, and that mounting defaults in such districts with consequent pyramiding of assessments to the point of confiscation, ever increasing delinquencies and inability to sell lands foreclosed by the districts caused a condition of chaos to exist which resulted in the enactment of Chapter 60 of the Statutes of 1933 and Chapter 36 of Statutes of 1935, commonly known as ‘Section 11 of the District Securities Commission Act.’ That this act authorized, subject to the provisions thereof, the levy of assessments during the period of the emergency thereby declared to exist, based upon the ability of the land to pay and contemplated that, with such relief, ordinary economic processes would permit such districts to rehabilitate themselves through enabling them and the bondholders in agreement

to work out refinancing plans before all values within such district should be destroyed. That after the passage of said acts districts levied assessments based on the ability of lands to pay, and commenced [367] proceedings to work out refinancing plans with their respective bondholders. That in many of such districts refinancing plans have heretofore been accepted by an overwhelming majority of the bondholders and proceedings have been brought under section 80 of the Bankruptcy Act of the United States to compel acceptance of such refinancing plans by small minority groups of dissenting bondholders. That recently the Supreme Court of the United States has held that such section of the Bankruptcy Act is unconstitutional in that it infringes upon the sovereignty of the States. That as a result of this decision there is now no legal procedure by which refinancing of the present bonded indebtedness of such districts may practicably be consummated. That the excessive debt burden of such districts has so increased and pyramided during the last three years, due to the inability to meet the annual debt obligations, that any present attempt to levy assessments designed to meet such obligations of such districts in full would result in overwhelming delinquencies, would prove largely uncollectible, would raise no adequate funds for bond or other debt service, and would be of no benefit to bondholders or cred-

itors. That, unless these existing chaotic conditions are remedied, in each succeeding year an ever increasing body of lands will default in payment of assessments and will remain unredeemed therefrom. That annual assessments in each succeeding year will fall upon a progressively lessening body of land which in turn will be forced to default in greater and greater quantities. That such inevitable and wholesale conditions of default will destroy the ability of such districts to pay their bonded debts in whole or in part and to carry out the necessary public functions with which they are entrusted as governmental agencies of the State. That on the contrary of refinancing plans now under way and accepted by overwhelming majorities of the bondholders of such districts can be effected, bondholders and creditors will be benefited, land in the districts will remain in private ownership, values will be restored and such districts will be enabled to discharge their public obligations. That the adequate credit, support and maintenance of such districts as governmental agencies of the State is a matter of vital State interest and concern; that the welfare of the State, the solvency of its banking institutions and the interests of the property owners in, and the creditors of, such districts, all require the speedy settlement and adjustment of the debt defaults of all such districts so that the financial standing, credit and tax collecting ability thereof may be restored.

Therefore, to meet this condition of emergency, the police power and the power of eminent domain are hereby invoked and such irrigation districts herein referred to are hereby authorized to institute and maintain the proceedings and actions as hereinafter set forth . . ." [368]

Petitioner's Exhibit No. 34 is a pamphlet entitled October, 1938 issue of the Agricultural situation, issued by the Bureau of Agricultural Economics, United States Department of Agriculture, the pertinent parts of which are contained in the Appendix. (p. 732)

At this point counsel for the petitioner read into the record the testimony of Dr. Murray R. Benedict from the record of the reporter's transcript of the previous trial in this court over the objection, however, to the evidence on the grounds that it is incompetent, irrelevant, immaterial and too remote. Failure to produce the witness was waived and consent given to the reading of his testimony subject to the objection above noted.

DR. MURRAY R. BENEDICT,

called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

Direct Examination

I have the position of professor of agricultural economics on the University of California Staff,

(Testimony of Dr. Murray R. Benedict.)
and agricultural economist with the Giannini Foundation of Agricultural Economics—agricultural economist on the experiment station, which positions I have occupied since July, 1931, continuously. I took my first collegiate work at the University of Wisconsin, took a Bachelor's degree in agriculture; thereafter, spent a short time on the staff of the University of Illinois, and then some two years as farm advisor in Minnesota, associated with the University of Minnesota; and thereafter, about eight years as head of the Department of Economics of the South Dakota State College at Brookings. And during four years of that time I also served as Assistant Commissioner of Agriculture of the State of South Dakota. Thereafter, I spent about a year and a half as a lecturer on economics at Harvard University, and then came to the position I now hold at the University of California. I have been there [369] continuously since, except for a period of about six months, two years ago, when I served with the American Statistical Association's [370] Committee on government statistics in Washington.

The Giannini Foundation is an endowed research organization, associated as an integral part of the University of California. Its work consists in the main of research studies dealing with economic problems of California agriculture and national agriculture.

(Testimony of Dr. Murray R. Benedict.)

A study was made by the Giannina Foundation under my direction with reference to the tax-paying ability of the inhabitants of the Merced Irrigation District. The major piece of the work was directly under my guidance; but we had through the period of study rather a close contact and advisory relationship with other people, both in the Giannini Foundation and in other divisions of the college.

Professor Frank Adams was a member of the general committee in charge of the study, and Professor H. L. Tolley, Director of the Foundation, advised with me. And both of those men subsequently went over the report in detail and approved it as released. They also consulted rather freely with such men as Professor Shaw in the division of soil technology, and with Professor Madison in the Division of Farm crops, and with several other specialists about the University.

This report was made as a result of the joint request by representatives of the District and of the Bondholders' Protective Committee. The first request was made in the early part of 1932.

The District had arranged for the selection of a rather large committee of representative men, a so-called committee of 27. That committee in turn selected an executive committee, and out of this grew arrangements for a fact-finding committee on which Professor Frank Adams, from the University, and myself were members. That committee requested

(Testimony of Dr. Murray R. Benedict.)
the Bondholders' [371] Protective Committee to participate, and arrangements were made for Mr. Robert Fullerton, Jr., of Pasadena, to act as an observer with that committee in respect to its general plan of procedure, and also for Mr. R. R. Underhill to act as an observer, with Mr. J. C. Cone in another phase of the fact-finding study; that was the classification of lands, which was done by Mr. Cone, not by our institution.

The report took about nine months and was completed and published in mimeographed form about January, 1933. Then at the request of the two negotiating committees, we later supplemented our first study with a consideration of the conditions in 1926, 1927 and 1928. That report came out in June, 1933. (The witness summarized the method and procedure followed in making the report, which procedure is set out in the report.)

There were at that time, I think, 1648 farms in the District of 20 acres and over. We used approximately a 20 per cent sample. 1931 was the last full year of business at the time we started the study. There had been, of course, a sharp break in prices in 1929 and just following, and we wanted to develop, for one thing, something of the change in conditions which had arisen since the period when most of these obligations were assumed. And three years back is about as far as is practicable to undertake to get a record of that kind, so we went

(Testimony of Dr. Murray R. Benedict.)

back to '29 in order to show what change in conditions had occurred during that period.

For milk, milk fat and alfalfa, the index number based on 1910 to 1914 is 100. It was 146 in 1928, 139 in 1929, 102 in 1930, 88 in 1931, 66 in 1932, 70.8 in 1933, and 88 in 1934. For the grain crop, which is prominent in that area, namely, barley, wheat and rice, the similar figures are for 1928, 112.8; 1929, 114.3; 1930, 83; 1931, 66.1; 1932, 46.4; 1933, 71.9; 1934, 81.9. The same years were used as a base for both sets [372] of figures. I have here the combined index number for California farm prices based on 1910 to 1914 as 100. In that combined index, 1929 is 146, 1928 is slightly higher, 149. Then going back, there is only one year, 1925, which is higher. That is 156. Then we have to go back to 1920 before we get as high a price level as prevailed in 1928 and 1929.

I have here a recent revision of the mimeographic circular of the University of California, of H. J. Stover, entitled "Farm Prices in California," issued in August, 1935. The index figures therein listed are as follows:

1910 is 97; 1912 is 96; 1914 is 95; 1915 is 96; 1916 is 114; 1917 is 144; 1918, 198; 1919, 210; 1920, 224; 1921, 153; 1922, 155; 1923, 135; 1924, 138; 1925, 159; 1926, 138; 1927, 139; 1928, 147; 1929, 153; 1930, 131; 1931, 91; 1932, 70; 1933, 74; 1934, 88; 1935, 91. 100 is the average from 1910 to 1914 per year.

(Testimony of Dr. Murray R. Benedict.)

The farms in the middle half of the array of class 1 lands show as a net over costs for out of pocket cash expense, labor, and county taxes, which I have classified as A and B Costs, a return per acre of, plus \$2.83 in 1929; minus \$6.47 in 1930; minus \$6.10 in 1931. For class 2 lands, the corresponding figures were for 1929, minus \$3.42; for 1930, minus \$8.09; for 1931, minus \$8.70. For class 3 lands, the corresponding figures were for 1929, minus 49 cents; 1930, minus 93 cents; 1931, minus \$1.63. This shows that with the exception of 1929, and then only with respect to class 1 lands, all of the properties being farmed, as an average, operated at a loss for said 3 years.

Taking the figures for the same three years, but this time including depreciation, the results are: On class 1 lands, in 1929, minus \$9.71; 1930, minus \$16.35; 1931, minus \$17.17. For class 2 lands the corresponding figures are: [373] 1929, minus \$10.01; 1930, minus \$16.07; 1931, minus \$16.69. For class 3 lands the corresponding figures are: 1929, minus \$1.43; 1930, minus \$2.14; 1931, minus \$3.90.

There was apparently a certain adjustment going on in there which perhaps will help to explain those figures. In the earlier stages of the District there had been some attempt to develop rather intensive agriculture on certain of the poorer grades of land. That was tending to go out of production for those types of products and be used more for grains and other field crops, so that there was

(Testimony of Dr. Murray R. Benedict.)

rather heavy depreciation on most of the intensive plantings and things of that kind that were put on to class 2 and class 3 lands. There is a table in the first part of the report which indicates some of those changes in acreage which were occurring over this period.

There were six large corporation enterprises from which we secured records in 1929. There were seven for the years 1930 and 1931. These were areas for the most part somewhat less developed than the rest of the District, although it included one or two properties that were very highly developed. For 1929, the five properties on which records were complete showed as follows: Net returns per acre above county taxes: Property No. 1, \$8.76. Second property, \$5.63. Third, minus \$1.46. Fourth, minus \$1.17. Fifth, plus \$3.46. These are being taken from page 65 of the printed report.

In 1930, the corresponding figures were, for first property, minus \$42.54 per acre. Second, minus \$21.63. Third, minus \$3. The next one is incomplete, and the next one is plus \$3.32.

For 1931, the corresponding figures are, on the first property, minus \$54.16. Second, minus \$17.29. Third, minus \$7.16. On the last one, plus \$1.25.

[374]

In general, if the corporations were operating the properties directly, they were losing rather heavily. If they were leasing the lands they showed

some small net return. One or two of these properties were very highly developed, with very large investments, which accounts for the rather high operating loss per acre.

With respect to the grain, rice and pasture lands, three divisions were made there, because the conditions were very different. The rice lands operated quite differently from the barley and grazing lands. The most of the information on these came from the books of the larger corporation operators, because they are the ones that own most of those lands.

For barley farms, in 1929 the average return above A and B costs and county taxes was minus \$10.31. In 1930, plus 33 cents. In 1931, minus \$6.03. There is a slight printer's error there—this is taken from page 66—it should be 1931 instead of 1932, as shown here. On the leased farms, they showed a small net return above their costs. The figures I have just given are for the operated farms. Leased farms, 1930, plus \$2.14. 1931, plus 19 cents. 1932, plus 86 cents.

For the rice lands, the corresponding figures are: For 1929, plus \$5.08. 1930, \$4.68. 1931, minus \$2.96.

There is a little variation there. Those include the interest on improvements at 6 per cent, because that was included in the records as the bookkeepers had them, and we couldn't separate it very well.

For the pasture lands, the returns are shown on page 67 of the report. Rentals on these lands average about \$1.50 per acre for the years 1929, 1930

(Testimony of Dr. Murray R. Benedict.)

and 1931, and for the years 1932 and 1933 about \$1 per acre. Most of these lands are not well suited for anything but grazing. County taxes averaged approximately 58 cents per acre. The difference as of 1932-1933 was [375] about 42 cents per acre net to the owner.

I also made a study for the years 1926, 1927 and 1928 with respect to some 26 properties that were representative properties. It was not possible to get as exhaustive and accurate report for these last three years.

In this latter report, for 1926 business, the acreage involved is 45,816, and the net income before taxes was \$76,006.00. County taxes amounted to \$86,658, and Merced Irrigation District Tax \$308,006. Total operating expenses and taxes, county and District, amounted to \$1,220,488, leaving, after payment of county and District taxes, a figure of minus \$318,658. For 1927 the corresponding figures are as follows: The acreage is 47,906. The net income before taxes is minus \$142,591. County taxes amounted to \$88,615. Merced Irrigation District taxes, \$290,523. And the net after both types of tax were taken out is minus \$521,729.

There is a printer's error on that page, which you probable have noticed. In the first column at the left, on page 119, there should be a minus sign before the \$163,777.

At this point Mr. Downey asked that that be noted as a correction in the report itself.

(Testimony of Dr. Murray R. Benedict.)

The Witness:

For the 1928 business, the corresponding figures are, net income before taxes, minus \$180,287. County taxes \$89,411. Merced Irrigation District assessments, \$278,934. And a net result after payment of district taxes of minus \$548,632.

For the three years the total net income for 1926, 1927 and 1928, before taxes and District assessments, was minus \$246,872. The net income after taxes for the three years was minus \$1,389,019.

Taking the situation as a whole, the District had not reached a stage yet in 1929 when the assessments that were being [376] paid were being earned by the land, for the most part. Most of the money paid the District came from outside sources as an investment, based on expectations of later improvements in value. Many individual farmers consulted told of having on other sources of income.

At this time the report itself was admitted and marked Petitioner's Exhibit No. 35.

Petitioner's Exhibit No. 35 is as follows:

Since Petitioner's Exhibit No. 35 is a booklet or pamphlet of considerable proportions and cannot be summarized a true printed copy of said Exhibit No. 35 is attached to the Appendix as Appendix "A" hereto.

Cross Examination

Q. By Mr. Clark:

The comparative table of variations in agricultural prices as represented by the United States

(Testimony of Dr. Murray R. Benedict.)

Department of Agriculture, Bureau of Agricultural Economics, is as follows:

1910 figure is 102. 1911, 95. 1921, 100 (I believe the latter should be 1912, 100). 1913, 101. 1914, 101. 1915, 98. And the 1916 figure, on the 1910-1914 base, is 118. 1917 is 175. 1918 is 202. 1919, 213. 1920, 211. 1921, 125. 1922, 132. 1923, 142. 1924, 143. 1925, 156. 1926, 145. 1927, 139. 1928, 149. 1929, 146. 1930, 126. 1931, 87. 1932, 65. 1933, 70. 1934, 90. The 1935 figure is not yet out. The corresponding figures for California for October and November, 1935, were 109 and 108.

If I assume that the lands paid, without going delinquent, for the year 1925-1926, for a million and a half, I would not say that no part of it was yielded net by the lands, but I don't think that much was yielded by the lands. It represents investments put in by outside sources, in a considerable part. [377]

At page 75 of my report, at the bottom of the page is found the statement: "The report here presented will appear, to most readers, a very dark picture . . . It is now nearly impossible to sell the foreclosed farms at anything approaching the amounts originally loaned on them." Those conditions were certainly present in the Merced Irrigation District, and it was practically impossible to sell foreclosed lands in that area; more difficult there, even, than in other parts of the country.

(Testimony of Dr. Murray R. Benedict.)

We made no assumption relevant to the fact that a very substantial amount of the sums that had been paid on Irrigation District taxes had been advanced by holders of mortgages and deeds of trust on the lands within the district, but I think the records show that there was considerable of that occurring. Of course, advances of that kind, that would be made by the holder of a deed of trust, would depend on whether he expected to get out some such amount later. In a good many instances where money had been loaned upon land, the lender chose not to pay the District taxes and preferred to let their investment go. However, I have no statistical record of them in this report.

The condition as regards mortgage indebtedness was not one of the factors that we took into consideration in the determining of the capacity of this land to meet Irrigation District taxes, because the other obligations would have to be met by the individual before we would have a value in the land on which he could support a mortgage. We undertook to judge the capacity of the land to pay by the productive capacity of the land itself, and considered that those collateral means of meeting these taxes had been practically exhausted.

Q. Now, at the bottom of page 108, and the top [378] of page 109, you state,

“If we assume the average debt for the farms on which information as to debts was given to be applicable to the entire 1463, the

(Testimony of Dr. Murray R. Benedict.)

following figures give a rough approximation of the total amounts owed by these farms as first mortgages and as second and chattel mortgages." Then follows: "Estimated total of first and second mortgages for the 1436 farms of 20 acres and over (excluding rice and pasture farms), \$4,501,456.00."

How were you able to carry that out in this figure? What was the basis of your estimate? What was the data that you got whereby you made a computation that resulted in those odd figures?

A. It was simply extending to the whole universe the average figure for the sample.

Now, the accuracy of the total depends on how good the sample was. This, of course, was not as carefully drawn a sample as the one used in the main part of the study, because it is more difficult to get information concerning a mortgage deed than it is to get these other types of information.

Q. It was perfectly easy to check up, was it not?

A. Yes, sir.

Q. The local banks held a good many of these mortgages and deeds of trust, and the other lending institutions in and about the District, did they not?

A. That could have been secured. As a matter of fact, it was somewhat of an afterthought

(Testimony of Dr. Murray R. Benedict.)

in the study. The negotiating group asked for some information concerning that. We had secured it in the survey on quite a large number of the records and simply brought together what information we could in a short time concerning that. To go directly into the original records for an area as large as that would probably have delayed the matter for another two or three months. It would be quite a task. . . . [379]

Q. Who particularly was it that inquired and asked for some information on this subject of loans on lands in the District secured by mortgages and deeds of trust?

A. I don't believe I can give you that at this time.

Q. At what stage of this investigation was the obtaining of that information suggested, if suggested?

A. In the course of the study we were in rather constant touch with the various members of the fact-finding committee, including Mr. Cone, Mr. Shaffer, Mr. Thelen, Mr. Fullerton, and Mr. Underhill; and as these various problems were discussed, certain types of information seemed pertinent, and where possible we got those. If they did not relate directly to the main study, they have for the most part been put into these various appendixes to the main report.

(Testimony of Dr. Murray R. Benedict.)

The county tax shown in the report is the total tax collected through the office of the county tax collector. There was no segregation made for the purpose of showing the taxes in different bonded Districts. I did not, in judging the capacity of these lands to pay, take into consideration that all that land in that District was bonded with other bonded indebtedness, payable by the levy of taxes upon an ad valorem basis. I knew there was some indebtedness of that kind, but I did not make sufficient investigation of it to say that all land was covered by that. The county engineer did considerable work on the overlying bonded indebtedness. He did not supply me with his report.

We relied on the Cone-Underhill survey as a basis for the classification of the character of the soils throughout the District. The Cone-Underhill report was published by the District in the same cover as my report. [380]

On pages 14 and 15 of the report there is a gross tabulation of land within this District that was highly improved, that was planted to orchard, that was planted to vineyards, and that was planted to alfalfa—that is, the acreage.

There were quite a good many developed dairy farms in the area; I wouldn't say highly developed. They have not the necessity there for quite the type of buildings and equipment that some parts of the country would need in the dairy industry.

(Testimony of Dr. Murray R. Benedict.)

There is a table on page 12, indicating the bearing and non-bearing acreage for each of the principal tree and vine crops.

The acreage in almonds, apricots and peaches constituting bearing orchards within the Merced Irrigation District, was in 1932, roughly, 11,000 acres. This was bearing as distinguished from non-bearing.

In 1932 there were only about 600 acres of new plantings of deciduous fruits, presumably planted less than five years. There was about 9,500 acres of figs in 1932; also about 1,000 acres of olives and walnuts.

These plantings were not in the main by large corporate holdings. The California Packing Corporation orchard consists of between three and four thousand acres, mostly in peaches.

I noticed that most of the orchards that were in production were planted on the better lands. There were fairly substantial acreages of deteriorating trees on lands where they should not have been planted in the first place. That amount was probably offset by the trees that were coming on, the new plantings.

I did not depend on my own judgment in estimating the fair market value of the lands of the District. I got the best judgments I could get from a considerable number of people of [381] long experience in the state, including quite a number of specialists at the University, and quite a good

(Testimony of Dr. Murray R. Benedict.)

many talks with people in the District, where they had record of the costs of establishing orchards.

I do not know of direct knowledge that good peach orchards are today receiving offers of \$350.00 an acre. It may be true.

Q. Well, the fluctuation would be above \$350.00 an acre, not below that, for a fully developed peach orchard in prime condition?

A. There is a showing in the report of the costs which we used. I have not referred to that for some time. That states as follows: "The average peach orchard will carry itself, under usual conditions, in the fifth year. The useful life of the tree is about 15 years." I am reading from page 86. "To compute depreciation, regard inputs to orchards under five years old as capital investment; that is, show both as expense and increased value of the land. For orchards of five years or over, figure cost at five years to be \$225.00 per acre. Charge off one-fifteenth of this each year for the next 15 years."

Now, that is the basis we used in this study—estimating the cost of establishing peach orchards at about \$225.00 per acre. That is the cost of bringing the peach trees to bearing, independently of the value of the land. These investments have been made by these various companies and individuals that owned the 11,000 acres of land.

(Testimony of Dr. Murray R. Benedict.)

There is not very definite data available concerning the market value of orchards, deciduous fruits—market value per acre, running back as far as 1910. It varies a great deal, depending upon the yielding power of the trees, and the quality of the yield. It is a rather speculative type of industry. On [382] page 12 you will find the acreages for the county given from 1927 to 1932, inclusive. Now, those are not quite directly applicable to the District, but almost all of the plantings of this type are in the District.

Now, with respect to alfalfa, the total acreage as shown by the ditch-tenders' survey in 1932, was 18,377, and I think that is about correct; a very accurate determination. The extent of improvements, such as the leveling and the installation of pipes or the laying out of ditches for its irrigation, varied considerably on different places. Of course this would not necessarily involve the laying of pipes. I think as a rule that is not done for the general field crops like alfalfa. It had been done some in the orchards. All of this alfalfa land had ordinarily had at least a rough leveling. Some of it was not in very good shape. Of this land quite a lot of it was adapted to the raising of alfalfa, and some of it was not.

The life of the alfalfa plantings has apparently been declining rather rapidly there in recent years. They have been having more and more difficulty from certain types of fungus disease that shortens

(Testimony of Dr. Murray R. Benedict.)

the life of the plant. There was a great deal of discussion about that problem in setting up our rates of depreciation. I think we spent a number of meetings with specialists of the College of Agriculture attempting to arrive at conclusions, and the final result of those discussions was that in a cycle of eight years—this is taken from page 87—you can figure on four full crops, and one or two part crops, the other two years being those in which other crops are grown.

The additional land outside of that planted to orchards and to alfalfa, is broken down much more completely than classed as grain land and as rice land. There is a complete record of the uses to which the land is put on pages 14 and 15 of the report. I think there would be as many as four or five thousand acres devoted to truck crops. That is a somewhat unstable type of farming; that is, a great deal of it is carried on by renters. They rent in one area for a year or two or three, and maybe move to some other piece of land. [383]

All of this land that I mention, the orchards, the alfalfa land, and the truck farming land, had to be leveled so as to adapt it to irrigation—at least some leveling. That in itself costs about \$30 an acre. It depends on the conditions that they found. Naturally, some land, of course, is more expensive than other land to level.

In 1929, 6,351 acres had been growing rice. In 1930, 596 acres. In 1931, 1,876 acres. That is a type

(Testimony of Dr. Murray R. Benedict.)

of production that varies a good deal with the price of rice. That land was all adapted to the growing of rice, although there were some changes in District policy which affected that at about this time—the zoning out of certain lands against rice because of the damage to other lands from seepage.

Judging from the table on page 15, of that general type of land there was apparently 49,729 acres used for grazing—land on which no crops had been planted. It is my impression that most of this land had never been in crop, or a great deal of it, at any rate.

There practically is not any such thing as a typical period. 1929, 1930 and 1931 were the last three years preceding the time at which we undertook to get this information, and about the only three years that were available to us. Also, it did cover and show the transition that had occurred during that period.

In 1932 there was 19,205 acres in all classes of grapes in the County; for the District the figure we have gives 13,845 acres. Apparently practically all of them were producing. [384] The 1932 figure for the county gives only 41 acres non-bearing. The figures given for the District, which figures were taken from Mr. Dooley Wheeler's figures—the agricultural commissioner—shows that 3,650 acres were in wine grapes, and 4,240 in table grapes, and 5,955 in raisin grapes. That is the year 1932. For the most part I presume that those vineyards were

(Testimony of Dr. Murray R. Benedict.)

all planted on soil adapted to the raising of vines. There are considerable exceptions to that, and one can see quite considerable acreages in going through the District where vines have been abandoned.

In determining the capacity of these lands to pay the Irrigation District taxes, we specifically left out the revenues derived from the sale of power. It is an engineering problem and is not one of determining the ability of the lands to earn or to pay. That is a much more definite thing than the other sort of information, and our study was directed specifically at the earnings and expenses on the farm lands.

Cross Examination

By Mr. Cook:

The Witness: In my study and attempting to determine the ability of the land to pay, where a man was farming and had certain other sources of income from business carried on on that farm, or from his labor for work he may do, that is included in the income shown. It does not include any income from any outside investments that he might have, but if he was doing some work off the farm, or if he had some particular kind of business that he carried on right there, that income was included.

We did not make a specific study of the Merced City situation. I think there is some information

(Testimony of Dr. Murray R. Benedict.)
concerning that in one of the appendixes. The assessed value in the cities, and incorporated towns, is not a very large part of the total assessed values. You will find some consideration of that [385] on page 103. Your rural property in the District, the assessed value was \$18,006,195, and the total for all lands in the District was \$20,246,775.00. That is about \$2,000,000 for the lands in the cities. About one-ninth of the assessments of the District, apparently, must be carried, borne, by the cities.

Of course, in that assessed value, you considered the fact that this was merely an assessment upon the land and not upon the buildings in the City of Merced, but that as a matter of fact the buildings and businesses and enterprises conducted there do enter into the ability of the city to pay its taxes.

In my report all income from dairy industry—cattle production—and the like, is included for the farms in the survey. Merced county has quite an amount of live stock, although quite a lot of that is outside the District—that is, the beef cattle phase of it. The cattle industry within the District is pretty largely dairy, except for some of the poorer lands in the outlying parts of the District.

In my calculation I did not consider the farm as a social factor—that is, as the home of the citizen; the study was directed to finding what amounts of money were available to carry these various obligations.

(Testimony of Dr. Murray R. Benedict.)

In the cost of production that I calculated, the principal items included were: The various cash operating expenses such as seed and spray materials, gasoline and oil, and feed purchases and things of that kind in the one class; labor used in the second class; the taxes paid for the other governmental units; and the depreciation. There is another item which is important on many of the farms, but was not taken into account here, and that is, of course, the amount of interest that they actually paid or were paying on private obligations owed. The reason that was not included is because costs of that type, if they are not paid, do not necessarily throw land out of production, [386] they result in transfer of ownership to someone else. We were endeavoring to show those taxes or costs which would actually have an effect of throwing land out of production.

I did not include the irrigation assessments in my cost of production. The study was designed to reflect the amount of money that would be left out of which to make payments of that kind.

I regarded the county tax as one which must be paid, for we were trying to see what expenses would have to be met if people were going to stay in that area and continue to farm it; and if school systems break down and their government breaks down, of course they wouldn't stay there. That results practically in the necessity for meeting those expenses.

(Testimony of Dr. Murray R. Benedict.)

I regard the reclamation of arid land and the development of irrigation systems a less essential governmental function than the school system, the police, highways and roads, because these other functions were carried on before the District was formed. Now, when you have the District formed and the irrigation enterprises established, there is, of course, quite a lot of land that couldn't be operated in the way that it is now operated if they did not have this irrigation service.

I have not computed in my report the relationship of the bond debt service to the total cost of production. One reason why we did not include it is that we wanted the report to reflect the picture as accurately as possible, and these costs vary a great deal from farm to farm. For example, if you will refer to page 35 of the report for lands in class 1, which refers to the third column from the left, the total costs A-B-C-D per acre varies from \$11.35 up to \$143.30. If it is the operation of grain land, costs are not very high. If it is operation of a highly developed peach orchard or fig orchard, it may be up in [387] the higher range there; and an average figure is apt not to show that situation very clearly. That was the reason for presenting the graphs shown on pages 68 and 69, which reflect those more accurately. And it is also true that the higher costs may not necessarily represent losses or low net incomes. They are in some cases accompanied by proportionately higher returns, perhaps

(Testimony of Dr. Murray R. Benedict.)

more than proportionately higher; and the thing that really tells the story is the net between those costs and the incomes, and that is the thing on which we endeavored to focus attention.

It is my opinion that the entire elimination of bond service charge would not have enabled the Merced Irrigation District people to show a profit in the years under consideration. It is probable that with some period of readjustment there would be changes there that would improve the situation somewhat over what it was at that time. The costs tend to fall down more slowly than do prices in a declining price period. It is not alone the bonded debt which caused the distress, but that was the largest single item involved.

For some little time it was virtually impossible to secure loans in the District, because of the unsettled status of the conditions there. I think about a year or a year and a half ago, the Federal Farm Credit Administration began to make a few loans of what is known as the commissioner's loan type, which is more in the nature of an emergency loan than the ordinary land bank loan. I have been told—I don't know this at first hand—that they are now making a few loans of the ordinary land bank type. I do not know the extent of either of these types of loans. These mortgages are principally held by insurance companies, some by commercial banks, and some by other types of banking institu-

(Testimony of Dr. Murray R. Benedict.)

tions. Some are held by the Bank of America, but I do not know to what proportion or quantity.

[388]

Q. In your report, Doctor, on page 10, you have set forth conclusions drawn by Mr. Wells A. Hutchins of the United States Bureau of Agricultural Engineering, which you state is the result of a study of 37 irrigation projects that had defaulted in their bonds; and I take it that your including that report is somewhat with approval of what he has to say, and I wish to refer you to the statement from Mr. Wells A. Hutchins' report to which you refer, which is United States Department of Agriculture Circular No. 72, "Financial Settlements of Defaulting Irrigation Enterprises, United States Government Printing Offices, Washington, 1929," reading as follows: "Participation of existing farm mortgages is practically indispensable to a satisfactory settlement if, as is so often the case, farm mortgages are common; for a settlement by bondholders alone, purporting to be based upon productive power of the lands, but ignoring such mortgages, may be wholly nullified by continued presence of heavy private farm debts. From the mortgagees' own standpoint, their security is bound to be affected by the outcome of a general refinancing plan, and if the project is a district, their lien is subordinate to the as-

(Testimony of Dr. Murray R. Benedict.)

assessment lien and may be wiped out as a result of tax sale. Consequently, it behooves them to assist in every way possible in making the reorganization a success, even to writing off material portions of their own mortgage principal. Such concessions may measure the difference between success and failure of the plan, and in any event are far better for the mortgagees than the total or almost total loss of security which may follow failure to adjust all debts on a practicable basis."

Q. In your view, Dr. Benedict, would you consider the participation of the mortgage liens in this proceeding as one of the elements that should be considered, and as one of the obligations against the land which should be affected and scaled down in a proceeding of this character? [389]

The Court: Just a moment. The question, in effect, is whether or not the holders of mortgages should not also participate in this reduction. Now then, you can express your view on that. In other words, according to Mr. Cook's position, we are singling out the non-consenting bondholders here, and we are proposing to reduce them in the same degree as those who consent. But this is merely one of the obligations of the District, the same as school bonds, same as county bonds, or improvement bonds for various districts that might exist. Of

(Testimony of Dr. Murray R. Benedict.)

course, the nature is a little bit different from a mortgage, which is a personal act, individual act, of the landowner. But I think the question is one I would like to have your view on.

The Witness: The answer is "No," but it requires an explanation, your Honor.

The Court: Well, now, go right ahead and explain.

The Witness: That explanation is given more fully on page 28 of the report. All obligations are valid, it seems to me, if there is means of paying them. Tax assessments are related to the quality of the land and are supposedly uniform for a given quality of land. We have, however, considerable variation in the ability of different farmers farming the same kind of land. Some of those men on class 1 land will make profits; some will not; some will make losses. Obligations in the nature of personal loans which are owned by the superior farmers who can make some money on the land and can pay them, would not necessarily be scaled down nor would their scaling down be of any direct benefit to the bondholders. The bondholder depends on a uniform assessment on a given quality of land. On the other hand, there have been considerable scale downs of personal loans or bank loans where the individuals were not able to pay them, and where the property was not of sufficient value to satisfy the mortgage. [390]

(Testimony of Dr. Murray R. Benedict.)

Q. Do you not apprehend that if the bonds, which are a lien superior to the mortgages, are thus reduced, that the benefit will redound almost entirely to the benefit of the mortgage holders and not the farmers—if they are not compelled to scale down in proportion to consideration of the fact that they have a genuine incumbrance?

A. I would say no; but again, there is need for an explanation. Of course, not all farms are mortgaged. I do not know, and my report does not show, what proportion of the farms are mortgaged.

The Giannini Foundation was set up in 1928, and this was the first study of this type that was asked for after the foundation began to function. There have been studies of somewhat similar nature by various individuals connected in one way and another with the College of Agriculture prior to that time.

The cost of this report was not computed. The University paid most of the costs with the exception that the District agreed to pay for the field help which I might select for getting the field records. That involved four or five people for a period of two or three months.

Mr. Fullerton did not participate in making the survey. He attended the earlier sessions of the fact-finding committee, and went over the plans for the study. The plan of procedure and report had his approval.

(Testimony of Dr. Murray R. Benedict.)

Mr. Underhill did not participate in the survey in this phase of the field. He worked with Mr. Cone on the classification of lands. He was employed by the Bondholders' Protective Committee. I don't know whether he was paid by them.

The first requests for making the report came from representatives of the farmers of the District—two or three resolutions; one from the County Farm Bureau, one of the District Board, one I think from the Board of Supervisors of the County, [391] and later Mr. Keplinger joined in that request. The comment was made that Mr. Keplinger stated to me that the Bondholders' Protective Committee did not wish to participate in the making of this survey, but merely would act in the capacity of observing, and they asked that Mr. Fullerton and Mr. Underhill be their representatives as observers rather than as specific members of the committee. I do not know what Mr. Keplinger's occupation was at that time.

Cross Examination

By Mr. Childers:

The Witness: These particular studies were made at a time when agricultural prices were very low, although I don't think we could say an all time low. However, the status in 1932 and 1933, the general index of agricultural prices was the lowest it had been since at least as far back as 1909. At the time my report was made, from June, 1932, to

(Testimony of Dr. Murray R. Benedict.)

sometime in 1933, and for a year or two back of that, and for all times since, business has been going through a serious depression.

In 1932 I wouldn't say conditions were fairly good for this particular District. This, because the District was comparatively young, it had been started, the expenditures made, in a period of relatively high prices, and there was apparently an over-optimism as to the extent of development that might be expected in the near future. There is some question as to whether the District is continuing to develop. The table shown on page 12—Table 1 of the report—shows some downward trend in acreage of nearly all of the intensive crops, which carries an implication that development is not proceeding.

If general economic and farming conditions come back, in fairly good condition in the next few years, I still would not expect these large holdings to be broken up more or [392] less, and additional development take place in this District, because there has been a very pronounced change in the general situation affecting a great many of the California specialty crops and many of the major fruits of the United States, growing out of, in large part, a sharply reversed world situation. Many of these products depend to some extent on export markets, and those markets have been very sharply curtailed in recent years, and there is no present indication of very much improvement for a considerable time to come.

(Testimony of Dr. Murray R. Benedict.)

All business, including agriculture, has improved somewhat since 1933. If we assume that agriculture and other business conditions come back to a condition similar to 1910-1914, or any other period, we may select, materially above what it is now, many of the indications of my report would still apply. The best estimates that the United States Department of Agriculture has been able to make are that, without some form of curtailment in many lines of production, that we must squeeze out of production variously estimated amounts of land—from 25 to 50 million acres in the United States; that is bound to be a depressing influence for a very considerable time, possibly 10 to 20 years, if that is the procedure which results. The agricultural adjustment program was, of course, designed to ease that transition. That has been eliminated, for the present, at least. What future developments will be is very difficult to determine at this time.

It is my opinion there is no prospect of a sharp rise in agricultural prices. By a sharp rise I mean such an increase as we had during the period from 1915 to 1919; during war conditions. I would expect a rise equal to the 1930 prices. I do not think it would go above that. I do not think this District is as productive a district as some further up the valley—Turlock and Modesto. Long continued development does improve a community. [393]

It is my understanding that the Merced District has a good water supply, although it was short in 1931.

(Testimony of Dr. Murray R. Benedict.)

I suppose the item of labor, which if deducted from the farmer's costs, would affect his operation just as much as the particular cost of bond service, but the farms wouldn't be operated if the labor were not performed. Neither would they be operated if they didn't have the water. It is not particularly irrigation district cost or bond service that is breaking the farmer more than any other item of a similar amount, except that there seem to me to be a difference in the necessity of certain types of things for continued operation of land.

It is not as important to scale down private debts as it is to scale down public debts. If the district debt is not put into manageable form, you would get it pyramided, which would eventually put all the lands into the hands of the District, resulting in non-operation of considerable parts of it. In the case of private debts, if they are not met, the person who owes the debt loses control of the property, but it goes into some other private hands, and that does not necessarily mean that it will be taken out of production. In the private debts, one farmer is not dependent upon what another farmer does. In the district debt he is. In other words, the individual farmer would be the only one that would suffer, and not the community. Of course, the community does suffer if there is any very large scale transfer of property through foreclosure.

(Testimony of Dr. Murray R. Benedict.)

I regard the family labor as a proper item of cost when determining the ability of the lands to pay. It is not comparable to the labor of an owner or operator of a small business that is not making a profit. The small farmer has little in the way of resources that he can draw on. There probably is some similarity, but in a given community there are not enough small business men to have the same effect on the situation. [394]

The less developed districts could be expected to have a higher cost of operation than a district well established, and fully developed. I do not know enough about the Turlock District to give a comparative ratio.

Cross Examination

Q. By Mr. tum Suden:

The Witness: On pages 68 and 69, the graphs represent all of the farmers operating on the given classes of land. You will note that you have a certain small group which drop down very low and have a rather large minus return per acre; and also over at the right, a group which come up very high. It was our feeling that the more or less level section of that graph would represent the mass of farmers—about the average sort of man and what he could be expected to do. This was a somewhat arbitrary classification, although it has a very good foundation in economic theory. The particular difficulties

(Testimony of Dr. Murray R. Benedict.)

that the man might have, such as illness or any other obstacle that may have occurred and prevented his having a successful showing on his ranch, is usually reflected in those extremes at the left of the graph. No other attempt was made to pass upon the particular ability of the farmer himself to farm the land in question.

The method used in selecting the parcels of land from which the report was made, is the nearest way known for getting a representative sample. Representative samples are purely chance. We used about a 17 or 18 per cent sample which is regarded as very good by most statisticians. Our sample was large enough so that personal ability of the various farmers would average out. There is no definite measure of personal ability except in results. Thus we took into consideration the variations in ability of the various farmers only by using such a large sample that by the method of averages (by drawing from a [395] hat) the variations would average out.

Cross Examination

Q. By Mr. Haynes:

The Witness:

Of the 300 farms used in the sample, not all were in production. I do not know the actual proportion, but they were drawn with the view in mind of getting the same proportion of non-operated farms as actually existed in the District.

(Testimony of Dr. Murray R. Benedict.)

In our table there are some farms, let us say of 40 acres, with an income figured on the basis of 40 acres, of which only 20 acres were actually in production. It is because of abnormal situations like this that we took the middle half of the array. It was the usual situation that where part of the land was laying idle, it was owned by non-residents of the District, and our reports almost entirely are from land owned by residents of the District, so that the books and records were available to us.

In our statistical system we struck out the top 25 per cent, and the bottom 25 per cent, and took the middle. The 25 per cent represent in number of farms, not in number of acres. Thus it is possible that the middle 50 per cent is not the middle 50 per cent in number of acres in the 100 per cent of farms picked out of the hat, although there is nothing in the situation that would indicate that it wouldn't be, on the theory of probability.

There are various reasons that may have caused the lands in the lower 25 per cent to be in that particular class. Illness or something of that kind, the acreage may not yet have come into production, or it may be going out of production. He may have just pulled out an area of peach trees or something of that kind. [396]

Usually the reason the upper class of 25 per cent is in the upper class is, because they have better land, or it is farmed better, unless there is some outside source of income.

(Testimony of Dr. Murray R. Benedict.)

Primarily, the lower 25 per cent represent unusual cases due to sickness and that kind of thing, or non-production; whereas the top 25 per cent represents primarily unusually good lands or unusually good operation.

Q. Now, that being true, I suggest to you that you do not get a real average at all when you take the middle. The bottom is not typical in any sense and should be excluded; the top, however, it seems to me, simply differs only in degree from the middle, whereas the bottom one is not only in degree, but in kind.

A. Except that there is no way of absorbing that larger amount of income in taxes. The tax under the law must be applied universally to a given quality of land. Therefore, if you get a tax up where it would still be within the ability of those few at the right to pay, you would have it above what the large mass of operators through the middle of the array could pay.

Q. The result, however, is not an average of income of productive land, but an average of income of productive and unproductive land, weighed somewhat by the circumstance that you are not going to take account of very large income?

A. As a matter of fact, we did compute the average for the entire group. It is very near the same figure as the average for the middle. That also includes the unproductive lands.

(Testimony of Dr. Murray R. Benedict.)

The non-bearing acreage was not large and not a very important item. There was a considerable amount of land in crops for which that land was not suited. That had something to do with the situation.

Further Cross Examination

Q. By Mr. Clark:

A. In my opinion, and I think it is a fair conclusion from what I have incorporated in my report, that cutting this bond debt in two would improve some the chance that mortgage debts would be paid. It would improve it as to all the lands. A uniform reduction in mortgage debts would not effect a corresponding increase in ability to pay District obligations. Mortgages tend to be more plentiful on the better lands in all parts of the country.

Cross Examination

Q. By Mr. Hooley:

In my report, labor was a very important item, considering the costs of production to the farmer or land owner. It seems reasonable that the family labor would constitute approximately one-half or the total labor. We figured the family labor on the basis of what it would have cost, if hired. Practically speaking, the farm does not pay anything for family labor. The effect of the allowance or computation of family labor would be to give that much

(Testimony of Dr. Murray R. Benedict.)

money to the farmer in the aggregate. Out of that he must support his family.

The middle half of the array, of which we have been speaking, was the middle 50 per cent of the 299 farms selected.

In selecting these 299 farms we eliminated as the beginning all farms less than 20 acres. This comprised about 1100 farms. There were about 1600 or 1700 farms of 20 acres or over. We felt that the major question of the ability to carry the District obligations would rest on the larger properties. That is shown to be true by the figures as to delinquencies shown on page 103 of the report, which shows very much heavier [398] delinquency for the larger properties. Now, we simply decided that some 300 farms out of a little less than 1700, would be an adequate and dependable sample, and we drew that many farms to get records from. The 299 is the whole sample. The report shows how many of each type of farm was included in the 299.

A farmer is usually a debtor, in this respect: When he makes money he pays down his debts or he expands his operations. When he does not make money he usually borrows, if he can. He does not usually set aside money for a rainy day, so to speak.

My report contains some information as to the amount of mortgages on the land in the District. When I commenced making the report I was aware that there was some controversial matter existing

(Testimony of Dr. Murray R. Benedict.)

between different interests in the District. I also knew that it was the intention of the District to refund the bond issue. I had the general knowledge that the Bank of America—without stating the amount—was mortgagee on considerable of the land of the District. Mr. Keplinger was one of the men who solicited my help in compiling this report. He came to me as chairman of the Bondholders' Protective Committee, but I did not know at that time he was connected with the Bank of America.

In the years covered in my report, the year of 1929 was the only year that production costs were less than the receipts of the land, and that year the farmer made \$2.83 an acre. I have not computed in my report of cost to the farmer, the amount of the Irrigation tax. I have eliminated that altogether. Thus, as an average, he would not have made enough in that year to pay the tax.

Had this survey been made back in 1919, and the survey showed what it did at this other time, I would feel that the formation of this District of improvement, the building of the [399] dam, the storage of the water, was an impractical proposition.

It is true, I think, that costs are being somewhat reduced from what they were in the period when this survey was made. Costs move down somewhat more slowly than prices of products do. It will depend upon this condition whether or not the new bonds will be as much a failure as the old ones.

(Testimony of Gustave Momberg.)

Petitioner's Exhibit No. 35 is the so-called "Benedict Report" being a printed booklet of 133 pages and true and correct copies are furnished in lieu of printing any portion of said report in the Appendix.

GUSTAVE MOMBERG,

called as a witness on behalf of petitioner, being first duly sworn, testified as follows:

I am district manager for the California Lands Inc. at Merced, and have been associated with California Lands at Merced since February 15, 1929. California Lands operate properties which have been foreclosed upon by various subsidiaries of the Transamerica Corporation. These properties are leased and a few of them are operated.

I graduated from high school in 1917; went to Western College of the Pacific three years, non-degree work at the College of Agriculture, Davis, graduating from there in 1921. From 1921 to 1929 I held various jobs varying from baling hay to operating packing plants and employing as high as 150 people. Part of this time I was in business for myself. These [400] various operations took me from Imperial Valley up to Mendocino county. Farming, processing, packing, selling and inspection of farm materials. In 1929 I went to work as the superintendent for all the properties in the district. There

(Testimony of Gustave Momberg.)

were 110 properties under my supervision at that time composed of an acreage of about 14,000. That was in the County of Merced, and about 6,000 acres were in the Merced Irrigation District. The number of properties under my supervision increased from 1929 on up to 1935 when we had a total of 248 properties in Merced County. I could not say definitely how many were in the Merced Irrigation District in 1935 but it was around 90 because there were 99 in 1933 and there were 94 in 1938 and it had not changed much during that period. At the present time the farms that we handle vary in size from 10 acres to 22,000. In crops we have everything from pasture to truck crop—fruit crop, peanuts, alfalfa, beans, corn, dairy set-up, various kinds of fruit, figs, olives, almonds, peaches, grapes, plums, pears—about all the crops that are grown in the San Joaquin valley. I would say that that property we have in the irrigation district was fairly representative of all the properties we had in our district. There were poor properties and good properties, adobe areas and sandy areas, shallow soils and good soils and on the creeks and out of the creeks. They are scattered generally throughout the Merced Irrigation District, commencing on the east and ending on the west, and on the north and on the south.

At the present time we are operating and leasing 94 properties in the Merced Irrigation District and are supervising at the present time 185 in all of

(Testimony of Gustave Momberg.)

Merced County, Mariposa County and all of Stanislaus County south of the Tuolumne River. It includes some farms in Turlock Irrigation District. We generally operate such properties as involves too much expense for the average tenant to handle; that require knowledge and a technique that the average tenant doesn't have. We operate a few of those ourselves and the balance are leased on shares and a few of them are leased on a [401] cash basis. In the case of non-perishables the tenant delivers the entire crop to the warehouse and our share is divided at the warehouse and we sell our share and the tenant sells his. In the case of perishable products such as fruits, grapes, sweet potatoes, etc., we exercise a supervision over the delivery and sale of those products and collect the money and distribute it to the tenant. We keep all of the records and returns from these properties under our supervision and I am thoroughly familiar personally with each and every one of these properties. I have superintendents working under me. I have kept records of the income and expenses upon those farms lying within the Merced Irrigation District operated in the manner indicated for the year 1937.

For the purpose of comparison I took 50 that we had in 1932-33 and the 50 that we had at the end of 1933 are the same today. In other words, I am giving the Court a comparison of an identical operation on 50 properties scattered as indicated and

(Testimony of Gustave Momberg.)

diversified as indicated in the Merced Irrigation District in 1932-33 and 1937-38 and they were under the same management and supervision. On these 50 properties for the year 1933 the gross income was \$36,301. The operating expense, which included working foremen on the property but not including the district's office and supervision expense, was \$15,469. The taxes that year were \$13,841. In the second half of that year we were not paying taxes on 16 of those properties. That made a net operating profit, not including interest, depreciation, insurance and supervision, of \$6,999. A gross operating profit not including depreciation, interest on investments, insurance or district or head office supervision. That was the net profit. That does not include taxes on a part of the properties for a half year because the taxes were so high we couldn't afford to pay them. I estimated those taxes, [402] had they been paid, would have been around \$3,000 in addition to the \$15,000 expense. We paid the spring taxes of 1933. At the time we did not know there would be a reduction in taxes, so we just decided to quit paying taxes on about a third of our property, 16 of which were in this group. The comparison would be worse if you consider the taxes that we might have paid but didn't. We redeemed some of them but some of them we did not. At that time the 1933 crop was produced during the winter and spring with labor being paid 17½¢ an hour. We re-

(Testimony of Gustave Momberg.)

deemed all of the properties in 1935. However, we quit paying taxes on a few more this year. We still have possession of all of those 50 properties. In 1937 those same properties grossed \$59,989. The expense was \$24,736; the taxes were \$13,000 and the net was about 22,000 odd dollars. The net operating income would be \$22,253 exclusive of interest, depreciation, insurance and supervision.

In 1933 when it was decided to put in the taxes of the property that I had not included the first time that would make a net operating profit of \$4,032 instead of \$6,990. That profit would be a gross profit. In other words, the gross profit would mean the profit exclusive of the items of depreciation, interest, insurance, etc., and my own salary and items of that kind.

I do not have the records of this particular group of 50 properties up to date. However, I have the records of the entire district for 1937-1938 and our income up to date for this year is 60% of what it was in 1937 and within that 60% is included the 50 properties that I have traced through. If we take 60% of the income we had in 1937 on this group which would be a fair estimate inasmuch as all of the other properties in the district are only taking 60% as the figure, that would bring a total estimated income for 1938 of \$36,000. Assuming that the [403] income up to date was 60% of 1937 we would just assume that the income at the end of the

(Testimony of Gustave Momberg.)

year would still be the same as 1937. Up to November 1st it was 60% of last year. Therefore, it would be only 60% of the total for 1937. It is 60% of what we collected up to that period last year. Therefore, if you take a gross income in 1937 on those 50 properties it is \$59,989. The estimated net income for those same properties would be very close to \$36,000 in 1938. It was \$36,301 in 1933. In other words, the 1938 income will be substantially the same as the 1933 income. However, the expenses will be about \$7,000 higher, mainly for the reason that in 1933 the crop was grown with 17½c labor and harvested with 20c labor but in 1938 it was 35c labor for production and 30c labor for harvesting. There are in that group the three properties which we operate. The operating expenses on that group of properties will be about \$22,000. That is on the whole 50 properties, because we furnish fertilizer, of course, and various other things. Every ranch has expenses every year in operating, and we take care of that ourselves; that is, it is under our supervision. In my experience the gross returns from any group of commodities on the average is about 20% to 25% less this year than in 1937. They were a little bit higher in 1937 and in 1938 than they were in 1933 but not very much. The income dropped 40% but the difference is accounted for by the fact that the quality of production was poorer this

(Testimony of Gustave Momberg.)

year and the quantity of production was poorer. We had a reduction in crops as well as in price. The income in 1938 has been reduced over 1937 by about 40% and the income in 1938 as compared with 1933 is about the same.

I am familiar with the general conditions in the Merced Irrigation District from the standpoint of soil conditions and also the condition of the irrigation system. The [404] Johnson grass problem has been getting constantly worse year after year. Thousands of acres now are so badly infested with Johnson grass that it is unprofitable to raise crops on that. Some of the land is too heavy to raise alfalfa on, so it has to go into permanent pasture because there is no other use for it; and that is not the only weed that is raising the cost production in that district. We have the Bermuda grass and the puncture vine and the sand burs. It is becoming the practice of the good farmers not to attempt to cultivate that type of land and at least 20% of their land is not in production. In other words, they can farm it for four years and then they have to clean it up the fifth year or if they want to they can clean up 20% a year. In other words, there is about 20% of the acreage that doesn't produce a profit on account of the weeds. In the case of Johnson grass alone they still raise some alfalfa on the better land.

The Merced Irrigation District has been kept up as well as possible with the money they have had available to do so. However, it is away be-

(Testimony of Gustave Momberg.)

hind in the amount of work that is necessary to be done to put their plants in shape.

The last answer was objected to on the ground that no foundation was laid and the respondents moved to strike. The objection was overruled and the motion denied.

The Witness: Some of these 50 parcels have dairies on them. The dairyman has had the best chance in the last few years because his prices haven't dropped as much and also because of the fact that he has livestock on his property that enables him to use a good deal of the poorer land and get some value out of his poorer land. The county has had a bad reputation with cows having considerable T. B. They have finally started to clean that up but they haven't finished it yet. There has been a considerable movement on the [405] part of the state and governmental authorities to destroy herds on that account but there is a compensation that the dairyman gets as a whole on account of the low prices for replacement of stock so that it has not hurt him very much.

Up to 1935 the district had the water table situation pretty well controlled. They were making constant improvements digging new drainage wells and canals and lining ditches. In 1934, it being a dry year, they made a good showing but in 1935, 1936 and 1937 with the rainfall above normal it put the ground water table up again and they have

(Testimony of Gustave Momberg.)

not been able to keep up with the drainage facilities during these wet years.

Twelve of our properties were quitclaimed to the irrigation district in the last two years and there are eight under consideration now. In those 12 properties there are approximately 1,000 acres. They are shallow and sandy lands. There are about 500 acres in the eight parcels which we are now considering quitclaiming to the district.

Cross Examination

We have about 40 properties located in Stanislaus County and within Turlock Irrigation District. I only took over the properties in Turlock Irrigation district last year. The records on these properties are probably in our office in Stockton. I didn't have the properties in 1932 and 1933 so I don't know what these properties in Turlock were doing in 1932 and 1933 without getting the record. For the years that I did have them the comparison was about the same. I could not give you the comparison for other years because tomorrow is a holiday and I am sure I couldn't get the records from the Stockton office by Friday. We have out of the 40 odd properties in Stanislaus County the records on about 20 of them. We just had the 20 transferred to us last week. [406]

(Up above where the figure \$68,000 is used, change that to read \$36,000.)

(Testimony of Gustave Momberg.)

The Witness: (After one day's recess.)

I secured for the years 1932, 1934, 1935 and 1936 similar figures that I gave upon the 50 properties. There were also 12 properties that were the same and had the same category in 1933 and 1937 but in the years 1932, 1934, 1935, and 1936—they changed in various years. "Some of them were leased in some years and some were operated in some years. So, therefore, these figures are for the three different groups, and I did not total—they are totaled for each group but they are not totaled for the whole." On the four properties which are operated the gross income in 1932 was \$13,270. The actual expense was \$12,036. The taxes were \$7,666 and the net loss was \$6,431. Those were the four properties that we have operated most of the time and that was for 1932. Of the 12 properties which had different categories in different years actual income in 1932 was \$7,843. The expense was \$7,838. The taxes were \$4,399. The net loss was \$4,394. Most of them were operated in 1932. Of the 34 properties, all of which were leased during all of these years, had a gross income of 1932 of \$4,809, an expense of \$983. Taxes were \$13,831 and net loss was \$10,005. These figures are for the calendar year. Therefore, they include the installments in 1931-32 season and the first installment of the 1932-33 season. In 1933 gross income of this group of properties was \$18,368; that is, gross income of

(Testimony of Gustave Momberg.)

these four properties. The expense was \$13,911, the taxes were \$35,001; the operating profit was \$955. For the 12 properties the actual income in 1933 was \$7,596; the expense was \$734; the taxes were \$2874 and the farm profit was \$3,988. For the 34-property group, in 1933, the gross income was \$11,317; the expense was \$888; the taxes were \$7,375 and the farm profit was \$3,053. In 1933, for the four-property group, the gross income [407] was \$36,173; the expense was \$22,413; the taxes were \$2,020 and the farm profit was \$11,640. For the group containing 12 properties, for 1934, the [408] gross income was \$6,266; expense, \$3,045; taxes \$1,576 and the farm profit was \$1644. For the group containing 34 properties, the gross income, in 1934, was \$12,346; the expense was \$1912; the taxes were \$7,660 and the farm profit was \$2772. For 1935 on the group containing four properties, the actual income or gross income was \$25,270; the expense, \$24,229; taxes \$3460 and the farm profit showed a loss of \$2419, that is, in the red. For the group containing 12 properties, in 1935, the gross income was \$6,661; the expense was \$1943; the taxes were \$2,002 and the farm profit was \$2,715. For the group containing 34 properties, in 1935, the gross income was \$11,387; the expense was \$2,060; the taxes were \$20,350 and the farm profit showed a loss of \$11,022. The explanation of that extra large tax item in that year is, as I stated, that there

(Testimony of Gustave Momberg.)

was a portion of these properties on which we stopped paying taxes in the calendar year 1932-33 and in that year we paid up all the taxes which had been delinquent during this period on this group of properties in 1935 together with the current taxes which explains why the taxes were so high for that year. Those taxes then should be properly distributable over the previous years of 1933, 1934 and 1935.

For the year 1936, the four-property group had an income of \$22,470; the expenses were \$21,567; the taxes were \$3,011 and the farm profit showed a loss of \$2,108. For the 12-property group, the gross income, in 1936, was \$13,435; the expenses were \$4,228; the taxes were \$2329 and the farm profit was \$6,877. In 1936, for the 34-property group, the income was \$14,602; the expenses were \$2,069; the taxes were \$8949 and the farm profit was \$3,583. For the year 1937, correcting the figures that were given in previous testimony, for the four-property group, the actual income was \$33,958; the expenses were \$18,762; the taxes were \$2976 and the farm profit was \$12,220. For the [409] 12-property group, for 1937, the gross income was \$13,775; the expenses were \$3699; the taxes were \$2285 and the farm profit was \$7790. For the 34-property group, in 1937, the gross income was \$17,753; the expenses were \$2781; the taxes were \$7437 and the farm profit was \$5,534.

(Testimony of Gustave Momberg.)

I have estimates based on such information as is available to date for 1938. In the case of the four property group during the years 1932 to 1937 three of the properties had always been operated. However, in 1938 these three properties were leased. Therefore, the gross income will be less, expenses will be less but so far as net returns are concerned they will be about the same. The estimated income of California Lands' share in these properties will be \$7,500 in 1938; the California Lands' share of the expenses will be \$1700 the taxes will estimate close to \$3,000; and the farm profit will be \$2800. The net income from the four properties in 1938 would be \$7500. In the case of the 12 properties the estimate for 1938 will be \$8,200; expenses, \$3,000; taxes \$2,500; estimated farm profit \$2700. The four-property group are properties that were operated from 1932 to 1937 inclusive; the 12 property group are properties that were in and out so far as leasing and operating were concerned. In different years they were leased and in different years they were operated, and the 34-property group the estimated income for 1938 is \$9400; estimated expense \$2400; estimated taxes \$8,000; estimated net loss \$1,000. No supervision, no expense for the maintenance of the district office or the head office, no interest on investment, no insurance on the buildings, no depreciation on the buildings or plants are included in the expense above mentioned. [410]

(Testimony of Gustave Momborg.)

Our office expense in Merced was approximately \$16,000 for the year 1937. Approximately one-third of the \$16,000 would properly be charged to the 50 properties in the group. California Lands are operating between 2,000 and 3,000 farms in California. I am handling from 180 to 220 so approximately seven to ten per cent of the farms are under my supervision and I suppose generally speaking the head office expense would probably be allocated in about that proportion if it were allocated.

Cross Examination

The Witness: For the first group containing four properties the acreage is 867 and the sale price which we are asking for the land is \$137,500. We are offering them at that figure but are not selling them. The second group containing 12 properties contains 572 acres and the sale price which we are asking is \$94,500. For the group containing 34 properties there are 2249 acres and the sale price is \$200,200. The grand total is approximately 3500 acres and we are asking approximately \$450,000.

There were approximately 200 to 300 acres in cotton in this group of 34 properties. I did not figure in my estimate any government parity payments. Those payments amount to a two cent penalty if we don't comply and a two cent bonus if we do comply, which makes a difference of two cents when you get it.

(Testimony of Gustave Momberg.)

The only years in which we have included all the taxes and in which we have paid all of the taxes and no others are 1936 and 1937. We paid taxes in 1932 on this group of properties and some of them were not paid in 1933. There will be four properties that will not have the first installment of the 1937-1938 taxes paid but that was included in my estimate of the taxes to be paid. In other words, they were omitted from the taxes, or I took a cognizance of the fact that they will not be paid in making this estimate. I can give a pretty close estimate of the current taxes in 1935. They will be a little less than the [411] 1936 taxes. I would say a fair estimate would be about \$8500 for the current taxes in 1935. If the current taxes for 1935 had been paid with no delinquent taxes, the result that year would have shown a profit of seven or eight hundred dollars in the group of 34 properties.

On the four-property group there were some taxes paid up in 1935 on a portion of one of the properties. I do not know how much it was. It didn't amount to very much. It couldn't have amounted to more than \$400 or \$500. In making up the amount of taxes paid I have not segregated the taxes paid for Irrigation District purposes and for other purposes. I have only been able to take those records from our final report and I have no data available as to what portion was county taxes

(Testimony of Gustave Momberg.)

and what was irrigation district taxes; but there are only two taxes on those properties—either irrigation district or state and county taxes. There are no other taxes in it.

There is included in the state and county taxes all of these other districts; that is, school districts, and improvement districts which are added to the county tax rate and levied in a lump sum.

I have been checking our taxes annually for the last eight years and I think it would be a fair estimate to say that the assessed valuation of the entire group of 50 properties is approximately sixty percent of what we ask for them as a sale price. I am talking about the assessed valuation for state and county taxes; not for irrigation district purposes. On that basis the 34 properties which have a sale price of about \$200,000 I would estimate to have an assessed value of about \$120,000.

The assessed value for state and county taxes and for irrigation district purpose varies but I would say that the [412] assessed valuation of this group of 50 properties for irrigation district purposes is very close to what we ask for them; that is, it is very close to \$200,000. The irrigation district is higher than the county.

I would say in the year 1937 that of the total taxes paid, approximately 50% of the taxes are for irrigation district purposes and 50% for state and county purposes. It just happened that I

(Testimony of Gustave Momberg.)

check that last year and I remember that. By state and county taxes I include all districts that are levied with the county tax rate.

We pay other charges for water than irrigation district tax on a few of these properties where the land is above the ditch and we have a pumping plant to service that land, but it is of small importance. Except in dry years the payment of irrigation district tax entitles us to free delivery of all of the water that we can use or need on our property, of course, within reasonable bounds, for irrigation purposes, without further charge. In dry years the water is not available to have all the water we want. Under those conditions we are put on a quota but there is no charge based on the amount of water we use. The irrigation district tax covers that entire water charge. On the basis of \$3.00 per hundred of assessed valuation which is the present rate on this group of 34 properties, the cost would approximate \$1.75 per acre per year for free delivery of water at the present time—between \$1.75 and \$2.00.

The net results on the two property groups containing the 12 and the 34 properties, in 1935, eliminating from consideration the back delinquent taxes paid, showed a net income of about \$3500. In 1936 it would be about \$10,450 and in 1937 about \$12,300 and estimate for 1938 at \$1700. In 1935 including all of the 50 properties we show a profit of

(Testimony of Gustave Momberg.)

\$3500 for the two groups and the loss on the four property group would [413] bring that down to about \$1100 profit. On all of them for 1936 we show a profit of about \$8300 and on all of them for 1937 we show a profit of 24,500 and some odd dollars and on all of them for 1938 of about \$4500.

Since 1933 we have made 67 sales. I have no record of the sales for cash but they are mighty few; but our record of sales to date in the Merced Irrigation District were 67 sales with 11 of them delinquent at this time.

Generally speaking, all of these 50 properties that I have been talking about and all others that I operate were foreclosed properties.

I would say that these 50 properties are fairly comparable in quality to what remains in private ownership in the district. The properties constituting these 67 sales that were made were below the average of our holdings. Most of the sales were made since 1935, very few made prior to that time. The bulk of the sales were made the first of January, 1936 to April, 1937. Our sales have fallen off 80% since 1937. The slump started in the fall of last year. There has been considerable inquiry since the election for property.

By delinquency in connection with the 11 sales, I mean failure to meet both principal payments and interest payments. As to the remaining 56 sales, these are up on their payments, but I would ex-

(Testimony of Gustave Momberg.)

plain that most of those payments are due on December 1st or later and that the 11 cases are property holders who have indicated to us at this time that they cannot make their payments. We will hear from a lot of others in the next month. Those properties comprise 20 to 40 acres. I would say 30 acres would be a good average and the fair average sale price would be between \$50 and \$65 per acre. Those were properties that had been leased. None of them had been operated by the company. We have not had much success farming this land as a whole. [414]

We were consulted in fixing the price at which these 50 parcels of land are held but the prices are not entirely with our approval.

There is no one connected with California Lands Inc. who is more familiar with the handling of these lands than I am. I have carefully inquired into the past history of these lands; their productive capacity and general possibilities in the way of production.

The charge for water service for irrigation water supplied by gravity of \$1.75 per acre per annum is rather low on the better properties but it is not low on 1400 acres out of this group.

When we resumed paying taxes in 1935 it was not my judgment as a practical farmer and as a citizen of the city of Merced that the district had been effectually and finally refinanced on the base of 50¢ on the dollar.

(Testimony of Gustave Momberg.)

They were paying these taxes on the ten year installment plan which of course costs us interest; but the outlook for general farm prices at that time and the outlook for sales and profit in farms in California were looking up. We had two years between 1935 and 1933 which had been quite an improvement in general conditions. It was our thought that perhaps it would pay us to redeem those taxes and we could sell those properties. However, I was optimistic.

There was a very substantial reduction in what we call county taxes prior to the levying of the tax for the year 1934-35. That reduction has not continued on to the present time. I cannot say that the tax rate in Merced County today is what it was in 1932 but I believe the taxes have practically increased 90 to 100 per cent since 1932-33. They went up 25% last year. These taxes are levied to support the schools in these various school districts and for road improvement district taxes and to [415] service the bonds of the County of Merced and of these improvement districts. We find listed on our tax bills a specific statement of the items making up the grand total of the county tax rate and I find these different taxes for bond service listed upon the tax bill. During the time I have been operating these lands I do not recall that there were any cuts made in taxes for bond service of any of these other districts.

(Testimony of Gustave Momberg.)

This company which I was managing, operates properties that have been foreclosed upon by the various subsidiaries of Transamerica. That is, Bank of America, the Occidental Life Insurance Company, Pacific National Fire Insurance Company, Central Bank of Oakland and any subsidiary of Transamerica transfers its property to us. They had mortgages on quite a bit of the land in Merced Irrigation District. The land that I have been operating is fairly representative of all of the land within the District. Other lending institutions throughout this period that we have been referring to here have had mortgages and deeds of trust upon lands within that district.

I would judge about six to seven tracts of land in this group of 50 were in dairies, but not in all the years. They were in dairies most of the time in the years that we had alfalfa. We did not operate any of them but during this period we found tenants for the six or seven tracts that were operated as dairies.

There are approximately 3500 acres in this group. About 200 acres is waste, that is canals and roads and not farmable; 1300 acres are lands that are above the ditch or subject to seepage or undesirable from the standpoint of weeds for the growing of row crops. Approximately 400 acres of this group has been in alfalfa nearly every year of the term; 40 acres were in almonds; 200 acres in fig

(Testimony of Gustave Momberg.)

orchards; approximately 270 acres in grapes of all varieties; 80 acres in peaches and the balance or about 900 acres, suitable for row crop farming, such [416] as beans, cotton, sweet potatoes, corn. It is an agricultural community.

Merced is within the district and is a prosperous city. Atwater has been getting quite a bit of its improvements from WPA money.

Referring to the four properties which we operated in 1936 the approximate figure for expenses was about \$20,000. All of our expenses on those properties in that year, including taxes, were about \$24,500. That constituted a per acre cost on the 867 acres of approximately \$27.00 per acre, if we want to figure it that way; but for practical purposes it would not be correct because we were only operating the acreage in fruit on these properties and were not operating the open land or the waste land. The open land on these properties were leased. The comparison would be the same. The operation of the properties would have brought a greater expense than is actually shown here, together, of course, with a greater revenue. The expense would be greater than \$27.00 an acre for the cost of operation on the average but the income would be a little bit greater. The district charge would be about \$1500 on the 867 acres. Of our total cost of \$27.00 an acre or more the total charges for all irrigation purposes, that is, the \$3.00 rate,

(Testimony of Gustave Momberg.)

constituted only about \$1.75. In other words, about five or six percent of our total expense was for all the water expenses.

Redirect Examination

The Witness: We have one farm outside of the district of about 22,000 acres which requires very little of our attention. It is leased for grazing purposes.

Recross Examination

The Witness: The prices that are fixed on these lands were on [417] the basis of what they should pay interest on over a period of time for fair prices and bear their tax burden. It was determined on the basis of a water cost between \$3.00 and \$4.00 rate per hundred over a period of time, and also on the tillable land and not on the waste land or the untillable land.

B. P. LESTER,

called as a witness on behalf of petitioner, testified at the former trial in this court, and the testimony received in evidence here as follows:

The Witness: I am B. P. Lester, of Los Angeles. I am engaged as secretary for bond reorganization committees, and am an officer and director in an investment securities house. I have been in the investment business for 14 years, and connected

(Testimony of B. P. Lester.)

with reorganization work for about 5½ years. I was secretary for the Merced Irrigation District Bondholders' Protective Committee since the formation of that committee.

In March or April, 1931, an informal committee was formed as a result of conferences between officials of the District and the houses that underwrote and distributed the bonds of the District. That committee was finally organized in March, 1932.

At that time there was another association called the California Irrigation and Reclamation District Bondholders' Association, which was working on the Merced Irrigation District matters.

When the report of the Giannini Foundation was completed, both groups of bondholders formed into a joint committee to consider and discuss the results. That joint committee has functioned as the Bondholders' Committee ever since, in regards to the Merced Irrigation District. I have been the [418] secretary of that Committee.

Investigators for the Bondholders' Committee prepared a great many reports in reference to the Merced Irrigation District, prior to the report of Dr. Benedict.

All of the reports prepared by investigators for the bondholders' committee and Dr. Benedict himself indicated that some sort of refinancing or reorganization was necessary and there was never

(Testimony of B. P. Lester.)

any question in the minds of the members of the Bondholders' Committee as to the need to refinance the District. The only difference in opinion among the committee members was as to the manner in which such refinancing should be accomplished.

The firm of Thebo, Starr & Anderton made a report for us in April or May, 1931, indicating that there might reasonably be expected a figure of close to \$500,000 per year revenue to the District from the power contract. Before the 1st of August, 1931, they revised that figure to \$450,000 per year. That was a gross figure.

After the Benedict report had been made, the District approved a certain financial plan in November of 1933. The Bondholders' Committee directed the employment of men to solicit the bondholders to deposit their bonds under the plan.

The Bondholders' Protective Committee addressed a letter to each bondholder whose address was known, whether he had deposited previously under some other plan or not.

The letter, dated January 7, 1935, addressed to "To the Holders of Bonds of Merced Irrigation District," was then read into the evidence as follows:

"Under date of December 15, 1933, the undersigned Bondholders' Protective Committee announced that a Refunding Plan had been formally adopted by the Board of Directors of

(Testimony of B. P. Lester.)

the Merced Irrigation District, had received the approval of the California Districts Securities Commission, and had been approved by the [419] voters of the District at an election held November 22, 1933. Concurrently with such announcement copies of such plan were forwarded to bondholders. Up to the present time, the holders of approximately 60% of the District's outstanding bonds have deposited or agreed to deposit with the Committee. [420]

“Bondholders were notified in the letter of December 15, 1933 that the District was making application to secure Federal aid in the repurchase or refinancing of the District's bonds. Holders were also notified that the Committee had assured the District that in the event funds for such purpose should be made available from a Federal or State agency, such offer would be submitted to bondholders.

“Negotiations for a loan from the Reconstruction Finance Corporation have been actively carried on during a period of the past several months, between the District and the Reconstruction Finance Corporation. The District has recently informed the Committee that the Reconstruction Finance Corporation has approved the District's application for a loan which will enable the District, conditioned upon

(Testimony of B. P. Lester.)

an agreement being effected between the District and its bondholders, to pay \$515.01 for each \$1,000 bond of its outstanding bonded indebtedness.

“While the Committee feels that the figure offered pursuant to the Reconstruction Finance Corporation loan is unduly low it is, however, important that the Committee be advised of the wishes of bondholders with reference to the acceptance or rejection thereof. Arguments which might be advanced in favor of, or in opposition to such offer would be based largely upon the circumstances of the individual bondholder. As a consequence, the Committee refrains from advancing any of such arguments in order that it may not appear to seek to influence the bondholders in their decision.

“We are enclosing for your use a questionnaire which we request that you complete and return in the enclosed stamped envelope to reach us not later than January 26, 1935. As the Committee’s action must depend to a great extent upon the expressions of bondholders in this manner, all holders are urged to express themselves immediately. [421]

“Holders are urged to cooperate to the fullest extent possible with the Committee in whatever course may be decided upon after the Committee has received this expression of opinion.”

(Testimony of B. P. Lester.)

A questionnaire was enclosed in the letter (and said questionnaire was read into evidence) (for the questionnaire see Exhibit "B", Appendix, p. 758) and the result of the vote on the questionnaire was, the holders of \$10,221.00, or 63 per cent of all bonds outstanding, voted in favor of the cash plan. \$1,147,000 or 7% of all bonds outstanding, voted for the refunding plan of December, 1933.

In view of this vote taken, the Committee had a meeting in San Francisco, adopted the cash plan, pursuant to the original bondholders' protective agreement, and requested the deposit of bonds from bondholders. At this time there was just short of 60% of the bonds deposited with the committee.

The Committee then gave the holders of those bonds a 30 day notice to withdraw if they objected to or refused to go forward with the cash plan. About 2 per cent withdrew. The rest were deposited by the Committee under the cash plan. At the present time there is approximately 90 per cent deposited under the cash plan. Those bonds were delivered to the Reconstruction Finance Corporation and are held as collateral on the loan to the District.

The bonds of the Merced Irrigation District during the years from 1925 through 1929, were enjoying a market price in excess of par. They sold as high as 106¾. With default in the District, the

(Testimony of B. P. Lester.)

bonds went down to—in early 1931—to 45 and 50. Gradually they declined until their low point, which was reached at the end of 1931—and during the year 1932—when they were as low as 16 cents on the dollar for the 5½ per cent bonds, and 18 cents on the dollar for the 6 per cent. In the spring of 1934 they were selling at about 28. They fluctuated [422] between 28 and 32 until the fall of 1934, when the RFC loan was granted, and they appreciated in four or five days with the announcement of that news, from 28 to 30 to as high as 43 and 44. Gradually from that time they increased to the final time that the RFC took up the bonds at 51½, the present price.

Cross Examination

The bonds were not listed on any exchange. The bonds were actively exchanged. In an issue of sixteen and a quarter millions of bonds, there are quite a number of them change hands currently from time to time. They are reported from time to time by various statistical services. Those prices are reported and printed and furnished to brokers, and from that procedure I base my determination of the market value of said bonds.

I know of no reason why the letters sent out by the committee to the bondholders did not provide an additional alternative to the bondholder of retaining his old bonds. As far as I know, the only

(Testimony of B. P. Lester.)

reason was that no one on the committee or on the outside believed the District would be able to pay the old bonds.

The two Messrs. Bekins were members of the Committee. The estate of which they are executors had \$186,000 of bonds. They had deposited their bonds under the refunding plan. James Irvine had \$100,000 of bonds, but they were not deposited under the refunding plan. The West Coast Life Insurance Co. had originally deposited. The company was represented by Mr. Etienne, a member of the Committee; he was president at that time. Mr. Charles Bates had some \$80,000 or \$90,000 of bonds, but I don't think he ever deposited them.

When the cash proposition had finally been voted on by the Committee, the result was 8 to 5 in favor of the cash offer plan. Those of the Committee who voted against it were: [423] Mr. Milo Bekins, Mr. Reed Bekins, Mr. Bates, Mr. Irvine and Governor Gillett.

After the cash proposition had been finally voted on, Mr. Bekins left his own bonds in and withdrew the estate bonds. Mr. Etienne had the bonds of the West Coast Life withdrawn. Mr. Bates' bonds were never deposited and neither were Mr. Irvine's under either plan. Mr. Etienne voted in favor of the plan. He stated that he felt compelled to go forward with the cash plan, in view of the returns from these bondholders, but that the Board of Di-

(Testimony of B. P. Lester.)

rectors of his company had directed him to withdraw the bonds of the company.

Governor Gillett resigned from the Committee altogether at about this time.

Pursuant to the provisions under which the bonds were originally deposited with the Committee, providing that once a plan was adopted by the Committee, they were compelled to file that plan and notify the depositing bondholders, and under that agreement they had 30-day right to withdraw from the time notice was received. The withdrawal was conditional upon the withdrawer paying the total propositional amount of expenses (around \$9.18 per \$1000 bond) incurred by the Committee during the period it had been in existence. That amount was paid by those that withdrew, and subsequent to the adoption of the cash plan, the District paid the expenses to the Committee, who refunded to the withdrawers that amount by them paid.

If Mr. Etienne made any statement at the meeting when he voted in favor of adopting the cash plan, stating that the reason he did it was because of the referendum, and not his own personal views, I did not hear it.

At the time the referendum went out the bonds were around 40, I believe. [424]

There was almost continuous contention in and about this District relating to the refunding of this bonded debt. There were many different plans con-

(Testimony of B. P. Lester.)

firmed and rejected, and various negotiations taking place without apparent result, and I think this certainly influenced the bondholders some in respect to their attitude to having this over with and making a day of it.

There was no written statement prepared of the overlapping debts. No report was made to cover the loans on the lands in the District secured by mortgages and deeds of trust. We went to the Bank of America, who reported \$980,000.00 mortgages held by them, including cases of lands taken over.

At the time the bondholders were asked to choose between those two plans, it had been a little over a year and a half since the bondholders had received anything in the way of principal or interest. 857 bondholders voted on the plan, either way. 658 voted in favor of the cash plan, and 141 in favor of the refunding plan, and 58 made no preference. 60% voted for the cash plan.

Redirect Examination

The Bondholders' Protective Committee approved the cash plan by a vote of 8 in favor and 5 against. Prior to that time the Committee voted unanimously in favor of securing a referendum from the bondholders. Each member of the Committee was entitled to one vote.

To the best of our knowledge, the total number of bondholders was approximately 1200. There are

(Testimony of B. P. Lester.)

60 bondholders representing \$961,000, or 5.9 per cent of the total debt, who are represented here in court as protestants. There is a block of \$41,000 of bonds, representing two-tenths of 1 per cent, held by holders whose bonds were deposited, who have not withdrawn their bonds, but who have informed the Committee that they object to having the bonds turned in at the 51½ figure, and have [425] not taken the cash.

There are \$578,000 of bonds held by 59 people, and representing 3.6 per cent of the total, who have not turned in their bonds, who have not protested in this proceeding, and have taken no action whatsoever in the matter.

There are \$73,000 in bonds, representing approximately one-half of 1 per cent, the owners of which we are not able to locate. That makes a total of 10.2 per cent. The balance of 89.9 per cent have been turned in and they have taken their 51½ cents.

Roughly, it would be about 1050 bondholders who have deposited their bonds.

Recross Examination

At the time the cash plan was adopted, the chairman of the Bondholders' Committee was Mr. Fred G. Stevenot, who is an officer of the Transamerica Corporation, and I believe an officer of the Bank of America. Mr. Stevenot voted in favor of the cash plan. Mr. Robert Fullerton, Jr., is a retired in-

(Testimony of B. P. Lester.)

vestor of Pasadena, and was vice-chairman of the Committee, and voted in favor of the cash plan. Mr. Fullerton is also a director of the Citizens Commercial Trust & Savings Bank of Pasadena, California. Mr. Charles D. Bates is a director and member of the firm of Bates & Borland at Oakland; he voted in opposition to the plan. Mr. Milo W. Bekins is an officer of the Bekins Van & Storage Company of Los Angeles; he was not present but his proxy voted against the plan. Mr. Reed J. Bekins, a brother of Milo Bekins, and he voted against the plan. Mr. Archibald Borland, a partner of the firm of Bates & Borland, Los Angeles, voted in favor of the plan. George E. Crothers, San Francisco, formerly a Justice of the Superior Court, voted in favor of the plan. Mark C. Elworthy, investment business, firm of Elworthy & Company, voted in favor of the plan. Victor Etienne, Jr., is president of the [426] West Coast Life Insurance Company, voted in favor of the cash plan, and subsequently the bonds of the West Coast Life Insurance Co. were withdrawn. Governor Gillett voted in opposition to the plan. Mr. M. Vilas Hubbard is president of the Citizens Commercial Trust & Savings Bank at Pasadena, voted in favor of the cash plan. Mr. Earl W. Huntley is an officer of the investment firm of Banks-Huntley & Company, Los Angeles, voted in favor of the cash plan. Mr. Myford Irvine is a son of Mr. James

(Testimony of B. P. Lester.)

Irvine, voted in opposition to the plan. Mr. Kep-linger was chairman of the Committee from the time it was originally organized under the Bondholders' Protective agreement on March 1, 1932, and remained chairman until he resigned as a member of the Committee in January, 1935. He was engaged in reorganization work in San Francisco. I do not believe he was an officer of the Bank of America, although at the time I believe he was representing the Bank of America's interests on the Committee.

Recross Examination

Witness said he did not keep any record of the market value of the bonds issued by the districts which have the overlapping liens, and was not familiar with the subject.

Petitioner's Exhibit No. 37 is a letter from the Bondholders' Protective Committee to the bondholders of the petitioner dated December 15, 1933, and is set out in the Appendix (p. 736).

It was stipulated that the refunding plan referred to in Petitioner's Exhibit No. 37 was approved by a vote of the District by substantially a 10 to 1 majority in November, 1933 and the plan was never carried out and that the respondent West Coast Life Insurance Company had deposited its bonds and they were on file until the cash offer plan was made and a referendum [427] submitted and then they were withdrawn.

Respondent's Exhibit "Y" is a statement containing a list of the bonds represented by the various members of the Bondholders' Protective Committee, the pertinent parts of which are set out in the Appendix (p. 885).

And it is stipulated that Mr. Etienne represented West Coast Life Insurance Company and that Mr. Stevenot represented the Bank of America and subsidiaries. It is further stipulated that Mr. Fred G. Stevenot was an officer of Transamerica Corporation at the time he was on the committee and that Mr. Keplinger was not an officer of the Bank of America but that he represented the Bank of America's interest on the Committee. It is also stipulated that of those who signed the letter which is Petitioner's Exhibit No. 37, Charles D. Bates, Milo W. Bekins, Reed J. Bekins, Victor Etienne, Jr., Hon. James N. Gillett and Myford Irvine all withdrew their bonds and all, with the exception of Mr. Etienne, voted against the cash offer plan except that Milo W. Bekins left his personal bonds on deposit and withdrew along with his co-executor, Reed J. Bekins, bonds in the amount of \$188,000 principal amount, belonging to the Estate of Martin Bekins, deceased. And it is further stipulated that Mr. Etienne, in voting for the cash offer plan, stated he thought the Bondholders' Committee, whether they liked the plan or not, were bound

by the expression of opinion by the bondholders individually.

Counsel for petitioner stated:

“Mr. Stevenot voted for the plan; Mr. Fullerton voted for the plan; Mr. Bates voted in opposition to the plan; Mr. Milo W. Bekins voted against the plan; Mr. Reed J. Bekins voted against the plan; Mr. Borland voted in favor of the plan; Hon. George E. Crothers voted in favor of the plan; Mr. Elworthy voted in favor of the plan; Mr. Etienne voted in favor of the plan; Mr. Gillett voted in opposition to the plan; Mr. Hubbard voted in favor of the plan; Mr. [428] Huntley voted in favor of the plan and Mr. Irvine voted in opposition to the plan.”

Counsel for petitioner then read a statement as to who each of the individuals was, their business and what interest they represented in composing the Bondholders' Protective Committee as follows:

“Mr. Fred G. Stevenot is an officer of the Transamerica Company and an officer of the Bank of America. Mr. Fullerton is a retired investor in Pasadena and was vice chairman of the committee. He was also a director of the Citizens Commercial Trust & Savings Bank of Pasadena. Mr. Bates is a director and member of the firm of Bates & Borland in Oakland. Mr. Milo W. Bekins is an officer of Bekins Van

& Storage Company of Los Angeles and resides in Los Angeles. Mr. Reed J. Bekins and Milo Bekins are executors of the Estate of Martin Bekins. Mr. Reed J. Bekins is a brother of Milo W. Bekins and resides in San Francisco. Mr. Borland is a partner of the firm of Bates & Borland and resides in Los Angeles. George E. Crothers is a resident of San Francisco, formerly a judge of the Superior Court. Mr. Elworthy is in the investment business in San Francisco with the firm of Elworthy & Company. Victor Etienne is president of the West Coast Life Insurance Company. Ex-Governor Gillette—we know who he is. He was a former governor and at that time practicing law in San Francisco. Mr. Hubbard is the president of the Citizens Commercial Trust & Savings Bank at Pasadena. Mr. Huntley is an officer of the investment firm of Banks, Huntley & Company in Los Angeles. Mr. Myford Irvine is a son of Mr. James Irvine of San Francisco.

“Mr. Cook: That is really Santa Ana, counsel.

“Mr. Downey: Santa Ana.” [429]

H. P. SARGENT,

called as a witness on behalf of petitioner, and being duly sworn, testified:

I have been the secretary of Merced Irrigation District since February, 1924 and have been with the District since its organization in January, 1922. The Irrigation District includes a very substantial part of the county of Merced. It was organized under the California Irrigation District Act and does not include any land outside of Merced County.

I have been the officer of the District actively in charge of refinancing since 1931 to and including the present time; also as secretary of the District since 1924 I have been the officer of the District in charge of the office and of the matters incidental and collateral thereto and I am familiar with the original project since the time of its inception. It was necessary to remove 17 miles of the Yosemite Valley railroad out of the reservoir site in order to construct the dam. The estimated cost of the removal of this 17 miles of railroad was \$2,270,000. The actual cost was \$5,500,000.

The District took over the canals and water rights and the other property of Crocker-Huffman Land & Water Co. which was a public utility serving a portion of the lands now in the District and also at that time assumed the obligation of an encumbrance against the system. Among others were obligations to deliver water at very low prices. About 2200 persons were landowners who held such

(Testimony of H. P. Sargent.)

rights to service from the Crocker-Huffman Land & Water Co. After the formation of the District an agreement was made which called for the purchase of these water rights held by some 2200 persons by installment payments over a period of years. The gross amount to be paid annually for the sale of these rights was \$60,000 a year for 17 years and the total amount in 1936 still due was approximately \$400,000 and at the present [430] time there is due on those contracts \$180,000 and that represents about the amount at the time this proceeding was filed. There were about 1200 bondholders holding the bonds aggregating \$16,190,000, at the time of the first proceeding in bankruptcy. In other words, there were a great many more of the Crocker-Huffman holders than the number of bondholders.

In the resolution of November 14, 1934 provision is made for the RFC to advance money sufficient to purchase these Crocker-Huffman water contracts at 515.01 on the dollar. It was not made a condition to the refinancing of the District, however, in the resolution. No attempt has been made to refinance that for the reason that it did not seem practicable. There were a great many of these contracts, about 2200, and it appeared that we would have to have an abstract of title to every piece of property and the expense and the small amount involved did not seem practical of operation. There was also some

(Testimony of H. P. Sargent.)

question as to what might be the effect on the water rights of the District. The underlying water rights were there on which we also did not know what might come about.

With respect to this so-called first refunding plan which was referred to in the letter dated December 15, 1933, the people voted the plan in November. This letter went out in December and the plan gave a substantial relief to the taxpayers for a period of the first four or five years. No cut in principal; sinking fund bonds instead of serial and the Districts' Commission approved the plan and the District started to operate under it and continued to operate or attempt to operate under it until the loan was granted by the federal government or until the approval of the cash offer plan in February of 1935. The District went into default the first year under the plan about \$390,000. [431]

At the present time there are about 30,000 acres of land in the hands of the District unsold. I am in charge of the land department. Since 1929 there have actually been sold 6,000 acres. We have made every effort to dispose of that property as it has been deeded to the District. We find the obligation in the state and county taxes is a deterrent in sales, and the tax title also is a matter which bothers in making sales, and there has not been very much market for lands of any type in recent years in our district. Ordinarily, we sell for the amount of de-

(Testimony of H. P. Sargent.)

linquency against the property if we can find a purchaser but sometimes we sell for less.

Strictly operation and maintenance expense without the Crocker-Huffman contract payments of \$60,000 or without the power plant operation—power plant operation cost us \$22,000—is around approximately \$375,000 per year. That is based on recent experience.

We have been very much backward in respect to capital annual expenditures during this period of District default and attempted rehabilitation.

We have serious problems with respect to flood control in the District and drainage, high water table, etc. I would consider a necessary and reasonable normal capital expenditure for betterment at least \$125,000 a year so I estimate about \$500,000 a year for the operation and maintenance and the necessary capital expenditures at the present time.

Cross Examination

The District first began to operate under Section 11 in 1933. The first tax was 1933-34. When I state that the District went into default on this 1933 refunding plan we were under Section 11. The refinancing tax plan provided for a dollar a hundred the first year and after a survey of the District's land, that is, after a survey of the District of land and a submission of [432] the report to the commission, the board fixed the tax rate at a dollar per

(Testimony of H. P. Sargent.)

hundred under Section 11 and the plan provided for the same rate, that is, a dollar per hundred, and we went into default under the plan; but considering the refunding plan, the maturities on bonds and everything else, we did not levy the full rate but we did levy what the plan provided for.

The Crocker-Huffman contracts are all current; they are all paid up to date and they are maturing at about \$60,000 a year, so they will all be paid out in about three years—in 1941.

There are some drainage bonds of some drainage districts that the Irrigation District has assumed and are paying out in full. We had a contractual relation with the County whereby we took over bonds of three drainage districts that were formed prior to the formation of this District. These bonds are nearly paid out. We have been paying those out in full. There has been no reduction. The last payment of \$8900 is now coming up. When that payment is made they will all be cleaned up at 100 cents on the dollar and there will be nothing more on those drainage districts except our operation and maintenance.

We made no overtures to those Crocker-Huffman contract holders and we had no application for the \$515.01 on their contracts. In other words, while one or two asked if they were going to get it there was no formal application and there were no overtures to them. There just wasn't anything done about it.

(Testimony of H. P. Sargent.)

I have changed my opinion as to the estimate of strictly operating expense considerably, and would like to explain. \$350,000 was the cost I testified to in my former testimony, since that time wages and material have increased 10 per cent, and since that time in three wet years we have found out, to our sorrow, that a great many acres of land flood each year, approximately 10,000 acres [433] being under water in the last three years, large acreage of good orchards going out, and that sort of thing, and we find in this large acreage if we clean out three major sloughs that run through the district, it will take off this water from the land, and that is going to cost approximately \$30,000 a year added to what—well, we did not contemplate that much expense; and then the 10 per cent, 10 or 12 per cent increase in cost of labor and materials also brings that figure up.

We have been paying annually in retirement of the drainage district bonds approximately \$10,000 to \$11,000. I recognize that the acquisition of water rights is a capital expenditure that we purchased the Crocker-Huffman system and with their system of canals and water rights as well, and we have carried them and the payment on the drainage district bonds in the operation and maintenance figure—in the operation and maintenance rather than capital expenditures. I think I included the payments on Crocker-Huffman contracts and these payments

(Testimony of H. P. Sargent.)

upon drainage district bonds in my previous testimony that the expenditures were \$350,000 a year for operation and maintenance.

The good lands that are capable of bearing the assessments on the bonds aggregate approximately 90,000 acres and we have another category of lands which are the poorer lands—189,000 acres in all—189,000 acres gross in the District, including the roads and canals and all that sort, and cities. The net agricultural acreage is about 171,000. The difference between the 90,000 and 171,000, or 81,000 acres, carry the irrigation burden to a certain extent, but it is land which is not able to carry on year after year and pay the water charge. I have stated that as to a portion of the lands comprised within the 171,000 acres the providing of water is actually a burden and an expense to the District and that is reflected in [434] this estimate of operating expense. The result is that the good land is bearing, in my judgment, more than its share. Approximately 17,000 acres is above the ditch, which we boost water to out of booster plants—a series of booster plants, an expensive operation. The District has taken deed to a great number of acres of that land and does not put water on it—rents it dry for pasture and that sort of thing; but we will say if those lands are on the rolls and they could be eliminated from the District, the District

(Testimony of H. P. Sargent.)

would probably save at least \$50,000 a year in the operation cost.

We have a water toll for rice lands under a constant flow but other than that there is no toll system been put into effect. The water toll for rice land is because of the rather heavier burden that is inflicted upon our system as an entirety. The basic tax allows four acre feet of water in supplying rice lands with water. The toll starts on the fifth acre foot of \$1.00. We allow four acre feet without any charge. \$1.25 for the second acre foot. It costs ordinarily about \$6.00 or \$7.00 an acre for the water service for the raising of rice. That is the total tax of the water to the rice. The total cost including the tax and the toll. That figure is not in accordance with this later reduced tax rate that we have had in recent years. Of course, with the \$1.00 rate we have four acre feet of water; then it is not going to cost \$6.00 or \$7.00. When the tax rate is down to \$1.00 the assessed valuation would be say \$60.00 an acre, and that would be 60¢. We would get four acre feet for 60¢. Then a man getting water to raise rice would be paying \$1.60 a year. When the rate is \$3.00 an acre, applying the same method of computing, he would be paying about \$3.80 to raise his crop on an average.

If refinancing were complete it would, of course, bring about a cutting down of the very elaborate heavy expense of [435] maintenance and operation.

(Testimony of H. P. Sargent.)

In other words, the whole District structure may be changed. Certain lands should not be in the district. They would probably be excluded.

A great many acres of the agricultural lands within the Merced Irrigation District was subject to mortgages and deeds of trust.

The maintenance and operation cost for 1937 was approximately the figures that I have given.

Redirect Examination

At the previous trial I stated that the normal strictly operating expense of the District was approximately \$350,000 a year. In that I did not include the Crocker-Huffman or drainage contracts.

Counsel for petitioner stated that the power income for 1938 was \$730,558.47; for 1937, \$625,663.45 and for 1936, \$584,429.64.

It was conceded that the first refunding plan was adopted by the people of the District November, 1933. The Reconstruction Finance Corporation's first resolution was passed by Reconstruction Finance Corporation November 14, 1934. The cash plan was adopted by the Bondholders' Protective Committee February, 1935. The first bankruptcy action was filed in April, 1935. The first disbursement was made in October, 1935; that is, the big disbursement. The trial of the first bankruptcy action was in February, 1936. The judgment in that case was reversed by the Circuit Court of Ap-

peals in April, 1937. The District filed a petition for writ of certiorari in the United States Supreme Court and certiorari was denied by the United States Supreme Court in October, 1937. The State reorganization statute was passed in March, 1937. The District's action in the state court was filed in July, 1937 and was tried in January, 1938. Notice of decision in the state proceeding was [436] filed March, 1938. The decision of the United States Supreme Court in the Bekins case upholding the second federal bankruptcy act was rendered in April, 1938 and this action in this court, the one we are trying, was filed in June, 1938.

Petitioner's Exhibit No. 38 consists of the Notice of Motion in and the decree of the Circuit Court of Appeals and is set forth at pages 333 to 339 of Respondents' Exhibit "00".

It is stipulated that in addition to the stipulation already made that West Coast Life Insurance Company paid approximately par for the bonds it holds, that the same is true with respect to Pacific National Bank and with respect to Belle Cole and R. D. Cole, the same is true also with reference to Mary Morris.

Further Cross Examination
of

MR. NEEL:

I wish to correct the statement I made that the depositing bondholders were paid \$239,838.98 interest—it is a lesser amount—it is \$168,582.00. Subtracting those figures from the unpaid matured bond interest coupons as a payment thereon, it leaves the item of unpaid matured bond interest coupons net of \$4,082,919.

Referring to the item of accrued interest on registered bonds and coupons I have made a calculation of the credits for accrued interest on a portion of the bonds which could be considered as having been paid at the time of the payments to the RFC and the depositing bondholders. It amounts to \$129,000. Subtracting that from my original figure of accrued interest on registered bonds and coupons leaves \$875,757.74, and the current liabilities of \$5,448,256.47. We have a number of funds on the assumption that our outstanding obligation was the \$16,190,000 of bonds. For the purpose of showing the net balance sheet situation as to surplus or deficit those several funds should be [437] lumped together and that would show our capital liabilities of the unpaid bonds less current matured bonds of \$15,804,000 and that would show as of this time a net capital deficit of \$773,355.21 and that is on the assumption that all of the \$16,000,000 bond issue is outstanding and all of the un-

(Testimony of E. E. Neel.)

paid matured bonds are outstanding and interest is calculated on the unpaid matured bonds and coupons.

Respondent's Exhibit "Z" is a form of balance sheet from which the witness has been testifying, and is set out in the Appendix (p. 885). [438]

Counsel for respondent at this time read into the record from certain trade sheets for Elworthy & Company in connection with cross examination of Mr. Lester as follows:

"November 4, 1936 we will buy, subject to confirmation, Merced fifty-five flat. Then on the date of May 5, 1937 at fifty-six flat. And on the date of October 1, 1937 at fifty-six flat; and also on the date of February 5, 1935 five thousand Merced Union High School District 5 per cent bonds on 101.10 basis."

It is stipulated that Merced Union High School District is largely within Merced Irrigation District.

Respondent's Exhibit "BB" consists of the investment trade sheets above referred to and are summarized in the Appendix (p. 888).

(Petitioner rested.)

Mr. Cook stated to the Court that he had been unable to join with other counsel in stipulating as to what their several clients had paid for the bonds

that they hold for the reason that he represents 68 clients holding bonds of petitioner, and is not informed as to what some of them paid for their bonds, but that he knows it to be a fact that about \$500,000 principal amount of the bonds he represents were purchased from practically the original issue acquired in the very early days and that these bonds have been held for a long time and he assumed that they had been purchased at a figure above 90.

At this point the respondents moved for a dismissal of the proceedings on the ground of the failure of the evidence to support the petition, the insufficiency of the evidence and upon the other grounds urged in the several answers on file. The motion was denied subject to a review if deemed erroneous.

Respondents moved to strike out petitioner's exhibit No. 9 on the ground that no proper foundation was laid for the introduction of the same in that there is no showing that [439] the District ever approved the execution of the instrument at an election, the right to make such motion having been reserved at the time the exhibit was offered. The motion to strike was denied.

The respondents also moved to strike the contract of September 16, 1935 upon the same grounds and adding to that motion that the contract of September 16, 1935 is in conflict with the resolution of November 14, 1934 which purported to grant the

so-called loan to the District. The motion was denied. Express exception to the ruling was made for the reason that counsel wanted to ask whether it is the intention of Merced Irrigation District to restore to the bond fund these sums which it is claimed aggregate \$600,000 which funds were referred to in the examination of Mr. Neel. Counsel for petitioner was asked the direct question if he offered to make such restoration, to which he replied that he did not.

E. E. NEEL,

a witness on behalf of respondent, recalled, testified as follows:

Direct Examination

Assuming that the old securities held by the Reconstruction Finance Corporation have been cancelled or are owned by the District, respondent's Exhibit "AA" is a balance sheet which correctly represents the asset and liability situation of Merced Irrigation District and shows the amount of the RFC loan used to acquire those securities as of November 1, 1938 and shows all of the outstanding bonds and coupons and interest thereon other than the RFC bonds, as an obligation, and shows a surplus of \$10,743,532.62.

Whereupon respondent's exhibit "AA" was introduced in evidence and is set out in the Appendix (p. 887). [440]

(Testimony of E. E. Neel.)

The Witness: That brings down to date in general the form of our report to Reconstruction Finance Corporation which is in evidence.

Respondent's Exhibit "CC" is an assumed balance sheet, and is set out in the Appendix (p. 889).

CARL A. HEINZE,

a witness on behalf of the respondent, the testimony being taken from the reporter's transcript of the evidence taken in this Court in the matter of Merced Irrigation District, an Irrigation District, debtor, number 3907 in Bankruptcy commencing at page 290 as follows:

I am Carl A. Heinze, Los Angeles, California, a consulting electrical engineer. I have practiced in Southern California for the past 32 years. For 28 years I was engineer in charge of construction of power plants upon the original Los Angeles Aqueduct; had charge of their operation for some three years after construction work was completed; was transferred to Los Angeles, made chief of electrical distribution, during which period of time, that is, 1915 to 1926, I had charge of the entire electrical distributing system covering the expenditure of about forty millions dollars. In 1927 I was made assistant chief electrical engineer of the Department. In 1928, made assistant chief engineer

(Testimony of Carl A. Heinze.)

and general manager of the Department of Water and Power. Since 1930 I have engaged in private consulting practice, having my own office, during which time I have acted as consultant for the cities of San Francisco, Palo Alto, Fresno, Burbank, Glendale and Vernon. I built and worked on the original design, actually constructed the first large power plant in the City of Los Angeles, and in later years did part of the designing and had charge of operations of their complete distributing system [441] in connection with their hydro plant operation.

My work in connection with the Los Angeles Aqueduct required that we make continuous studies of the rainfall and expected power revenue to be derived from water flow.

I am familiar with the Merced River only insofar as I have studied it from the government supply reports. I have made such a study of the records from 1902 to date. Prior to 1902 the records are not so complete nor accurate, in that measuring stations have been fixed since that date.

I am also familiar, through my study, with the Exchequer power plant of the Merced Irrigation District, and I have computed the amount of power that would have been produced by that plant per year or per month, had it been in operation since 1902, exactly as the District has operated in the period from 1927 to date.

(Testimony of Carl A. Heinze.)

My computations are based upon the run-off of the river, coupled with the actual experience of the District over the last nine years. The average return per year, based upon a sale price of .0045 per kilowatt hour, with an 80 per cent load factor, and a maximum of 31,250 kilowatts, having in mind irrigation requirements at all periods and all times, over the period of 34 years, from 1902 to 1935, is \$500,415. As costs of operation I use the District's figures which produce an average per year of \$21,500. for the 9 year operating period of the District for labor and material chargeable to operating expense.

I used two methods in regard to depreciation, and as a result have my summaries in two methods.

The District itself uses what is known as the straight line method of depreciation, and their figures would give for the power plant itself, exclusive of the dam and intake, \$22,854 per year.

[442]

On a basis of a 5 per cent sinking fund method, which is the customary practice for hearings in rate cases and condemnation suits before the California State Railroad Commission, the annual depreciation, exclusive of the reservoir and dam, would be \$10,989. These lives, of course, are considerably shorter than the District used, and, of course, this amount would be much less, if used the longer lives as used by the District, which has

(Testimony of Carl A. Heinze.)

taken the life of the reservoir or dam as 100 years. In my use of the 5 per cent sinking fund method, I shortened that to 50 years, because that is the customary rate used by the State Railroad Commission. On electrical equipment, the District has shown a life of 40 years. I have shown a life of 35, because that is customary in all these proceedings here in California. On water wheels and turbines, the Railroad Commission uses 35, and District has used 40. Had I used the longer lives, as used by the District, the depreciation would be decreased.

The net income to the District on the average for the 34 years, after deducting operating expenses and depreciation, is \$456,058. This figure is based on the depreciation as used and set up by the District, the straight line method. If I used my straight line method I would get \$467,932.

It is common practice, particularly in connection with the control under the State railroad commission in the application of rate structures, to use the sinking fund method, and only put up as depreciation the amount which, plus its earnings, will equal the principal after a given number of years. All rate structures in the State of California under the administration of the State Railroad Commission carry in all cases a sinking fund method—it has been in the past 6 per cent, and lately been reduced to 5½ per cent. In this set-up I used

(Testimony of Carl A. Heinze.)

5 per cent, thinking that possibly a municipal district such as [443] this could not earn as large a profit with their idle funds.

In figuring my data for the run-off of the Merced River back to and including 1902, I used the records as recorded by the United States Geological survey in their water supply papers, with the exception that no such records were made during the years 1914 and 1915, and for which two years I used the reports and measurements as recorded in the State Department of Irrigation and Engineering, Bulletin 5, which gives a run-off of the Merced River.

As the basis for the experience figures of the District during the nine years of District operations, I used the District's record of kilowatt hour generation; from the amount of water held in storage month by month, I determined the average level of the water in the reservoir, and from the District's records of output, I determined the number of kilowatt hours per acre foot passing through the reservoir during any particular month. From these figures I completed a chart upon which each one of these monthly operating results were platted. Through these I then drew an average line to indicate average conditions which anyone else could expect to obtain for operating under the same conditions that the District did. And in that

(Testimony of Carl A. Heinze.)

way, I got a factor or relationship of kilowatt hours produced per acre foot passing out of the reservoir. It is very easy to see that more kilowatt hours could have been produced than actually were produced, but in my computations I have taken the figures as the District actually operated.

There is at least 50 per cent of the time in which the District got more kilowatt hours out of an acre foot of water than my study shows, because I used an average. Also, the District has been forced by reason of preference to giving water for irrigation purposes, to pass more water through the plant than correspondingly they generated kilowatt hours. Thus in my [444] reports I have irrigation requirements preference on that account. Also, by contract, the power plant was only operating 80 per cent of the 24 hours per day.

The figures of run-off as published by the United States Geological Survey, show that the nine years under which the District was operating were the lowest group of nine years within that period.

The amount of money that would be required annually to amortize a loan of \$8,600,000 at 4 per cent over a period of 40 years, is \$434,300 a year.

Mr. Cook: Q. Supposing the District used the water primarily and solely for the purpose of power generation, and not giving any consideration to irrigation necessities, how much

(Testimony of Carl A. Heinze.)

more power revenue would the District receive per year?

A. The plant should be able to produce 15 to 25 per cent more power under those conditions.

Cross Examination

A. I did not assume in my hypothetical answer that power would be delivered on a 100 per cent load factor at .0045 per kilowatt hour. It was in accordance with the contract now in effect.

The Merced River stream flow is perhaps exceedingly variable. It varies about like all other streams in California. In 1924 the run-off was 271,000 acre feet. For 1909 it is 1,605,000. For 1911, 2,111,000. For 1906, 2,088,000. 1907, 2,108,000. For 1931, 257,000.

The power income is not directly proportional to the run-off of the stream. In the peculiar conditions existing in the operation of the Exchequer power plant, when you have your maximum flow, these extreme flows of water, of course your reservoir has a very limited capacity; 289,000 acre feet is its capacity: and you waste so much of that water in periods of high [445] run-off that your effective kilowatt generation per acre foot of water actually in storage is really less than in periods of lesser flow. And your own operating experience shows that.

(Testimony of Carl A. Heinze.)

In the extreme variations of run-offs, the efficiency, however, drops down so fast that your actual production in kilowatt hours per acre foot of water passing through the reservoir varies considerably. It all depends on the way your run-off materializes. You can have a low run-off per year, not an extreme low run-off, but say an average low run-off; if it comes right, so that it can be stored and passed out for irrigation purposes about as it comes in, you will get more for kilowatt production that year than you will for the same number of acre feet, but coming to you in one or two fast run-off periods.

The amount of kilowatt hour production depends not only on the total run-off, but on the seasonal distribution of run-off. I took that into account in my studies and dealt with all of those extremes in mind in giving you the averages I have. My study is based upon the averages over this whole period month by month, not in annual averages, but month by month. The last thirty-four years were not evenly distributed, but there is, I think, reason to believe that it would be the same average.

The average income per year from revenue of power during the nine years actual operation of the District, did not equal or come up to the average of some \$467,000 which I gave as the average for the 34 year period.

(Testimony of Carl A. Heinze.)

The period of nine years speaks for itself. Under the same water conditions which were actually measured by the United States Government, if you had operated during those years exactly as you did in these last nine years, this is the production and income that you would have had.

In my opinion, I do not feel that a revenue produced in actual operation for a period of nine years, is a better measure [446] of what the plant may do in the future than an estimate based upon what it would have produced had it been in operation for 34 years in the past, where I used the actual cost of operation as a base for expense.

Redirect Examination

The longer the period in which the average is made, the more accurate and more dependable your answer would be. You have just that many more chances of being right.

Respondents' Exhibit "DD" is a copy of the report made by Mr. Heinze which is set out in the Appendix (p. 890).

Respondents' Exhibit "DD-1" is in the nature of a supplemental report by Mr. Heinze bringing his former report, which is Respondent's Exhibit "DD", down to date, and is set out in the Appendix. (p. 933).

LOUIS C. HILL,

a witness on behalf of respondent, the testimony being taken from the reporter's transcript of the evidence in this court in the matter of Merced Irrigation District, an Irrigation District, debtor, number 3907 in Bankruptcy beginning at page 327, as follows:

Direct Examination

I am Louis C. Hill, of Los Angeles, California. Resided in California since 1912. Prior to that in Arizona, since 1903. Prior to that in Colorado, for about 13 years. And then off and on in Michigan.

I am a consulting engineer; been in personal practice for about 21 years—outside of my regular work with the government, as supervising engineer for 11 years, in charge of the Southern District of the Reclamation Service, which took in five states. I have continued to do consulting work for the [447] government since 1914. I am now occupied in a consulting capacity on many government projects, both by the army and by the Bureau of Reclamation, and a few of them are: The All-American Canal; Hoover Dam; Bonneville; Fort Peck project; Muskingum project, which involves about 12 dams; Tygart in West Virginia; Conchas in New Mexico; besides the All-American Canal and dam. I have also in recent years done consulting work on private projects. I made one trip to Exchequer Dam and made a report on it.

(Testimony of Louis C. Hill.)

I am familiar with the water supply records in California, since records have been kept. I am familiar with the records kept on the Merced River, both by the Geological Survey, and by the estimates shown in Bulletin 5.

I am familiar with the output of Exchequer Dam.

I have made computations as to what would have been produced in money from the sale of power at the Exchequer power plant, had the plant now in operation been in operation for the last 60 years, upon the assumption that the plant is operated at an 80 per cent load factor, the power sold at $4\frac{1}{2}$ mills per kilowatt hour, and was operated primarily for irrigation purposes for the Merced Irrigation District.

The records show that from 1871 to date, the average run-off of this river was 1,045,500 acre feet; and during the last nine years there was about 127 kilowatt hours per acre foot, and during the previous 22 years there was 108 kilowatt hours per acre foot—or an average of the two, that is, weighted average of the two, of $113\frac{1}{2}$ kilowatt hours per acre foot. Multiplying $113\frac{1}{2} \times 1,045,000$ you will get 118,670,000 kilowatt hours, which multiplied by .0045, gives \$534,000 in round numbers per year, on the average. The 127 figure is based upon the actual records of the use made by the

(Testimony of Louis C. Hill.)

District, during the nine years of its existence. My calculations cover about 64 years. I have [448] used the records of State Bulletin No. 5.

In predicting the future it is more dependable to use an average based upon a long period, than one based upon a short period.

In the said period of 64 years, the last nine years shows the lowest average of any consecutive nine years within the period. (reading the periods from 1870 to date).

It is my opinion that looking to the future some 30 or 40 years, the District could reasonably expect the figures to approximate the average figure for the 64 years.

In 1923 the office made a study, which I spot-checked all the way through, covering the years from 1902 to 1921, this report on the Merced River.

Mr. Heinze and I made absolutely independent studies of this river.

During the 22 year period my total was 2,711,000,000 in round numbers, and Mr. Heinze's was about 2,770,000,000, in round numbers. These two reports were made some 12 years apart.

Cross Examination.

In one way, the law of averages does not hold good for any particular one year. The last nine years we have been passing through a dry spell. I found that during the last nine, ten, eleven or

(Testimony of Louis C. Hill.)

twelve years, the run-off was much less than it had been at any other previous time for a comparable time.

Speaking in terms of dry cycles, if a person were to attempt before that dry cycle commenced to predict what the future would be, based on the part, he would not get it right.

I made a study of the power yield of the Exchequer plant in 1924. That was before the Exchequer plant had been built. The purpose of that report was to find out how much this plant should earn if things continued as they were prior to 1924. That is, beginning with 1902 to 1923 inclusive. The assumption which was [449] made in 1924 of what the Exchequer plant would yield in the future did not work out. We have not had time enough to test what it would work out at. If you want to know what the next nine years worked out at, it was less than we had estimated. It did not work out for the nine years of operation. It was less in the nine years than we had estimated—for the nine years of operation. I said the Exchequer plant would have produced on the average, had it been operated since 1871 to date, it would have produced about \$534,000 annually. It would be impossible to get what it would have yielded in each of those years since 1870. But we took the low years when we had 127 kilowatt hours per acre foot produced

(Testimony of Louis C. Hill.)

for nine years, and we had 109 kilowatt hours for the last 22 years, and we take the weighted average of those two, which gives 113½ kilowatt hours, that is the probable average amount that would be produced during this whole 60 years. And I make that as 118,670,000 kilowatt hours, making a total amount of money, of course, of \$533,987.

Q. Well, now, in the report which you rendered it is stated as follows: "It will be noted that the gross power return may be expected to vary from only about \$300,000 to as high as \$700,000 per year, and further that several low years might occur in succession." I am now referring to the report of 1924. I have quoted you correctly, haven't I?

A. As far as I know, yes.

Q. Didn't you predict, based on the experience of the past, that the yield would vary from a minimum of \$300,000 to a maximum of \$700,000 per year?

A. Yes.

Q. All right. Now, based on actual operation of the plant since 1927, is it not a fact that that yield has varied from a minimum of \$95,000 to a maximum of \$602,000?

A. Yes.

Q. So it is a fact, is it not, Mr. Hill, that in that [450] particular case the estimate of the future yield based on the experience of the past did not work out?

A. That is true.

(Testimony of Louis C. Hill.)

Mr. Downey: That is all.

Q. The Court: You assumed, I suppose, in your calculations, that the market for power would continue?

A. No, as a matter of fact, I did not. In one of them I assume that it would continue for the term of the contract, which is 30 years still to run. And if you added a little—if they took in \$477,711 net from the power plant each year, that, in 30 years, would pay the \$8,600,000. But then, of course, you would have to add, if you wanted to, a total of \$32,489 if you used Mr. Heinze's method, which would mean a total gross income of \$508,600, for 30 years, to retire this \$8,600,000.

Respondents' Exhibit "EE" is a copy of the contract for the sale of power made between the petitioner and the San Joaquin Light & Power Company dated February 21, 1924, the pertinent parts of which are set out in the Appendix. (p. 945).

It is agreed by counsel for petitioner that the power contract which is Respondents' Exhibit "EE" has been sustained by court action but there has been no adjudication as to option to renew. The contract has not been renewed but it undoubtedly will be.

Respondents' Exhibit "FF" is a map or graph, being a copy of petitioner's Exhibit No. 24 and

having superimposed thereon lines that would indicate the respondents' theory of the debt situation and is set out or referred to in the Appendix. (p. 946). [451]

Respondents' Exhibit "GG" is a statement of the maturities of principal upon the bonds held by RFC and upon the balance of the bonds not held by RFC, the pertinent parts of which are set out in the Appendix (p. 949).

Respondents' Exhibit "HH" is the approval by the California Districts Securities Commission of the refunding bonds, the pertinent parts of which are set out in the Appendix (p. 949)

Respondents' Exhibit "II" is a map made by Mr. Bedesen, county surveyor of Merced County, showing the lines of Merced Irrigation District and overlapping assessment districts and is summarized in the Appendix (p. 955).

It is stipulated that the original map or plat may be substituted for the copy introduced in evidence, if found necessary or desirable.

Respondents' Exhibit "JJ" is a table showing total acreage of the county, the acreage in Merced Irrigation District, total valuation, tax rate in and out, bonds outstanding in the county, as made for the use of California Districts Securities Commission at the time the commission sanctioned the tax rate under Section 11 of the Securities Commission Act, and is set out in the Appendix (p. 956).

It is stipulated that the table set out in Respondents' Exhibit "JJ" speaks approximately as of the date of the trial of the first federal case.

Respondents' Exhibit "KK" is a statement which was prepared by petitioner as to the bond issues of various improvement districts which are located within or which overlap Merced Irrigation District, and is found at pages 109 to 118, inclusive, of Respondents' Exhibit "OO".

It is stipulated that Respondents' Exhibit "KK" is correct as of the date of the first hearing [452]

It is stipulated that all maturities of principal and interest on bonds of assessment districts overlapping or within Merced Irrigation District, including the county and cities, have all been met.

Respondents' Exhibit "LL" are extracts from report of the Board of Equalization. It is a summary of the reports of 1929-30, 1931-32, 1933-34 and 1935-36, the pertinent parts of which are set out in the Appendix (p. 959).

Respondents' Exhibit "MM" is the petition for debt readjustment filed in the first proceeding in this Court, April 19, 1935, in case number 3907. The exhibit includes all of the exhibits attached to the petition, and commences at page 10 of Respondents' Exhibit "OO".

Respondents' Exhibit "NN" is composed of a summary of the pleadings and proceedings in the first trial in this court, set forth in pages 41 to 54 of Respondents' Exhibit "OO".

It is stipulated that the statement appearing on page 54 of Respondents' Exhibit "OO" is correct, namely, "That said motions of respective parties to dismiss said petition were all duly and regularly presented to the Court, and after consideration by the Court, were jointly and severally denied and exception reserved."

It was admitted that the stipulation with respect to the prior record appearing on pages 7 and 8 of the transcript of the record which is respondents' exhibit "O" for identification was made and filed in the trial court or in the appellate court. [453]

It was also admitted that an agreed statement on appeal was prepared by the parties and signed with the approval of the judge who tried the case, and that that agreed statement was printed as a part of the record in support of petition for certiorari.

Respondents' Exhibit "OO" is the whole record in connection with the appeal, the applications for the orders allowing appeal, both addressed to the trial court and Circuit Court of Appeals, the orders obtained in both courts, and the entire record with respect to the appeal beginning at page 283 and with respect to the disposition of the appeal, all of which is from and including page 283 to 339 of the transcript of the record in the Supreme Court, which is Respondents' Exhibit "O" for identification, in which said Respondents' Exhibit "O" for identification is admitted in evidence as Respondents' Exhibit "OO" and a printed copy thereof as supplied herewith.

(Testimony of Louis C. Hill.)

It was stipulated that it was obvious that only one mass of bonded indebtedness of \$16,190,000 involved in this proceeding was involved in the former proceeding in this court.

It is further conceded that it was stipulated that the various dissenting bondholders owned the bonds which they claimed in their pleadings to own in the other proceeding in this court.

It is further admitted that the bonds, the ownership of which is pleaded in the pleadings in the first case, are the same bonds the ownership of which the respondents plead in this case, except that in this case the respondents plead, in addition, accruing interest upon the bond. [454]

It is further stipulated that the Supreme Court of the United States ruled upon the petition for writ of certiorari in October, 1937.

It is further admitted that in response to citations issued upon the two appeals taken from the first decree in this court that the petitioner's attorneys appeared in the Circuit Court of Appeals and represented petitioner in the proceedings therein made on the motion to submit the cause.

Respondents' Exhibit "PP" is the mandate that was issued by the Clerk of the Circuit Court of Appeals upon the judgment of April 12, 1937, the pertinent parts of which are set out in the Appendix (p. 962).

Respondents' Exhibit "QQ" is the judgment of the United States District Court entered pursuant to the mandate, and is set out in the appendix. (p. 964).

It was admitted by counsel for petitioner that no proceedings have been taken with a view to setting aside the judgment which has gone into evidence as Respondents' Exhibit "QQ".

Respondents' Exhibit "RR" is an extract from Bulletin No. 21 of the Division of Engineering and Drainage being pages 190 to 199, and is set forth commencing at page 118 of Respondents' Exhibit "OO".

Respondents' Exhibit "SS" is a copy of the minutes of the Superior Court of Merced County in the case of Reconstruction Finance Corporation vs. Merced Irrigation District, Number 11604 and is set out in the Appendix (p. 968).

Respondents' Exhibit "TT" is a copy of petition and complaint in intervention of Cogswell Polytechnical College, one of the interveners in the case last referred to, the pertinent parts of which are set out in the Appendix (p. 970). [455]

GEORGE F. COVELL,

a witness on behalf of the respondents, the testimony of whom is taken from the transcript of the prior proceeding in this court, commencing at page 461 of the reporter's transcript, as follows: [456]

GEORGE F. COVELL

called as a witness testified that he is a resident of Modesto, Stanislaus County, and a bondholder in the Merced Irrigation District, having ten bonds; that he had farmed all of his life in fruit, grain, and alfalfa in Merced County, and at the present time in San Joaquin and Stanislaus County. His experience has extended since 1890; and that he was acquainted with the Merced Irrigation District, including the land and farms, in a general way. He had looked at property both for loaning money and to buy; that one time he had bought dried fruits in the district. He is also acquainted with the Palo Verde and Imperial Districts, as well as Oakdale, South San Joaquin, Turlock, Modesto, and West Stanislaus, and that he is familiar with their soils and farms and lands; that he had been a director of the Modesto Irrigation District and participated in financing the same as well as in construction of canals.

Mr. Covell has a ranch in the South San Joaquin Irrigation District which is similar to the lands around Livingston, in the Merced District. He raises walnuts, almonds and grapes. He also has a ranch in the West Stanislaus District, raising apricots, peaches, alfalfa, almonds, beans, and melons. On the whole the lands of the Merced District average up fairly well with these districts. In the light of his experience as a director of the Modesto Irrigation District

(Testimony of George F. Covell.)

gation District and his farming experience and general experience he would say that the Merced District was a good project, but probably not managed properly. In response to a question by the court he stated that it was a feasible project, but may be mismanaged.

Mr. Covell is a bondholder in South San Joaquin, Waterford, West Stanislaus, Turlock, Modesto, and Palo Verde Districts. Before buying his bonds he examined the districts to some extent, based [457] upon his experience and considering the security back of the Merced bonds, he thinks that the District will eventually come out all right, although it may take some little time. [458]

In the report of Dr. Benedict, which is on file here, on page 10, he refers to a document or bulletin called the Financial Settlements of defaulting irrigation enterprises, by Wells A. Hutchins, Associate Irrigation Economist, Division of Agricultural Engineering, Bureau of Public Roads of the United States Department of Agriculture, known as Circular No. 72, dated July 19, 1929, and incorporates some of the conclusions as his own. I desire to read from page 18 into the record here the following sentence:

“Participation of existing farm mortgages is practically indispensable to a satisfactory settlement if, as is so often the case, farm mortgages are common; for a settlement by bond-

(Testimony of George F. Covell.)

holders alone, purporting to be based upon productive power of the lands but ignoring such mortgages, may be wholly nullified by continued presence of heavy private farm debts.”

Respondents' Exhibit "UU", is bulletin 21-H of the Division of Water Resources of the Department of Public Works of the State of California, being a report on irrigation districts of California for the year 1936, the pertinent parts of which are set out in the Appendix (p. 971).

On page 16, under Chapter III, Financial Review, appears this statement:

“Disbursal of loan funds were made by eighteen districts to take up portions of old issues that had been deposited in acceptance of compromises agreed upon. Refunding bonds were in most cases not issued. The R.F.C. accepted and held old bonds as security for the loans advanced until practically one hundred per cent of the outstanding issues of the districts had been turned in.”

In table 1, table 2 and table 3, referring to statistical data relating to the Merced Irrigation District, and comparing that with statistical data relating to the Turlock [459] Irrigation District, we find, in table 1 under "Capacity, acre feet," for Merced, 289,000, and total acre feet, distribution of water, 498,000. Under Turlock, for the same year, we find

(Testimony of George F. Covell.)

reservoir capacity of 226,000 and distribution 440,000. In table No. 2 we find, under gross area, Merced, 189,000 odd and irrigable area 165,000 odd. Under Turlock we find 181,000 gross odd, that is, I am not giving the exact number, and irrigable area 162,000 odd. In table 3, under the summary of assessments levied, tax certificates sold and so forth, under Merced we find total assessed valuation, \$12,078,000. Under Turlock we find \$13,373,000. We find the rate per \$100 for Merced, \$3, and for Turlock, \$2.76. We find the total assessment levied for Merced as \$342,000. I am just giving the round numbers. And for Turlock we find \$353,000. We find revenues collected in 1936 for water tolls and water and power sales, Merced, \$601,000 and Turlock, \$663,000.”

It is stipulated that Merced Irrigation District paid the expenses of the Reconstruction Finance Corporation for appraisal of \$750.00 or thereabout.

Counsel for respondents read into the record a telegram in the nature of a report from Thomas C. Boone, attorney for Oakdale Irrigation District, dated the day it is read and states:

“Oakdale Irrigation District has not delivered its refunding bonds to Reconstruction Finance Corporation stop the Reconstruction Finance Corporation a long time ago requested that refunding bonds be delivered but matters of procedure have caused some delay stop we

(Testimony of J. Alfred Swenson.)

received request from them yesterday to have bonds issued and delivered to them. Thomas C. Boone.”

Respondents' Exhibit "VV" consists of excerpts from the report of the District to Reconstruction Finance Corporation, and is set forth at pages 103 to 105 of Respondents' Exhibit "OO". [460]

MR. J. ALFRED SWENSON,

a witness on behalf of the respondent, the testimony of whom is taken from the reporter's transcript in this case in the matter of Merced Irrigation District, an Irrigation District, debtor, number 3907 in Bankruptcy, on February 12, 1936, commencing at page 345 as follows.

I am J. Alfred Swenson, of Turlock, California, an attorney.

I have made a study of the refunding bond issue insofar as the amount required to amortize the \$8,600,000 is concerned. I have also made computations and a study of the amount of bond interest and principal required to amortize the present existing loan as shown here on Exhibit 2, of the District. I have also made a comparative study and computation to show the loss of capital investment to the bondholder upon the amount of the face value of his present bond with interest coupons up to

(Testimony of J. Alfred Swenson.)

January 1, 1936. I have also computed the amount of percentage of loss on the bondholders' investment, taking into account the face amount of those coupons and bonds, and the offer of fifty-one plus cents per dollar, and have prepared a chart illustrating same.

I have also examined what is called the Benedict report, which is Petitioner's Exhibit No. 35, in the Merced Irrigation District case. I studied particularly the tables set forth on pages 116 to 123 of that report, wherein are set forth the income and expenses of 26 corporations and individuals operating in the Merced Irrigation District, showing their 1926, 1927 and 1928 business, the acreages, gross income, expenses, net income before taxes, amount of county and Merced Irrigation District taxes, and total operating expenses, and showing the net income after taxes. [461]

I also examined and made computations from the books of the District, and figures obtained from District officials with respect to the amount of the tax levy for bond service which was paid by the taxpayers of that District in the years 1926, 1927 and 1928, and ascertained the percentage of the bond service to the total assessment made by the District in those years.

I also calculated for those same years what the average spread would be if the present proposed re-funding bond plan were in effect, \$8,600,000, and the

(Testimony of J. Alfred Swenson.)

amount required to amortize it, which is \$456,000 a year.

I deducted that figure from the proportionate amount required and shown on pages 116 to 123 of the report, and ascertained the percentage that would be saved on taxes levied for bond service for those three years under the new proposed plan, and then calculated the percentage relation of that to the gross operating expenses of those 26 corporations shown in the report, for said years.

I have prepared a chart, which is a graphic illustration showing that if the proposed plan is adopted, the bondholder will suffer a loss on his capital investment of 53.3 per cent, and, that the landowner will thereby benefit to the extent of 7.4 per cent on his yearly operating costs, on the basis of said 3 years figures.

I qualify my results further, in that no assessments were made for bond principal in those years; that the assessments were made entirely for interest. Referring to the chart, Exhibit No. 2, of the Merced Irrigation District, the total assessment goes from \$954,000 to slightly over \$1,250,000. That gives an average assessment for bond principal and interest, for that entire period, of \$1,090,230.50, per year. If that had been taken as the assessment used in the chart, the percentage of benefit to the landowner would have been greater by 3.2 per cent.

[462] I used the actual assessment levied in prep-

(Testimony of J. Alfred Swenson.)

aration of my graph. In those three years, 1926, 1927 and 1928, the loss to the bondholder would have been 55.3 per cent, and the gain to the landowner 7.4 per cent.

Respondents' Exhibit "WW" is a chart or graph presented by Mr. Swenson, showing in graphic form the loss to the bondholder and the gain to the landowner in operation expenses, when the proposed plan is put into effect, and is described in the Appendix (p. 973).

Respondents' Exhibit "XX" consists of pages 27, 28 and 29 of Bulletin 21-A, report on Irrigation Districts in California for the year 1929, and is set out in the Appendix (p. 975).

Respondents' Exhibit "YY" consists of extracts from Bulletin 34 published by the State of California, Department of Public Works, Division of Water Resources, entitled "Permissible Annual Charges for irrigation water in upper San Joaquin Valley," and is found at pages 145 to 148 of Respondents' Exhibit "OO".

Respondents' Exhibit "ZZ" consists of pages 26, 27, 28 and 29 and pages 37 and 38 of Bulletin 21-F of Department of Public Works of the State of California, and is set out in the Appendix (p. 979).

Respondents' Exhibit "AAA" consists of excerpts from the United States Department of Agriculture, Bureau of Soils, and is entitled "Reconnaissance Soil Survey of the Lower San Joaquin

Valley, California," the pertinent parts of which are set out in the Appendix (p. 987).

The respondents rested and moved the court for dismissal of the proceedings upon the grounds of the insufficiency of the evidence to sustain the petition, and upon the grounds urged at the beginning of the hearing. The motion was taken under advisement. [463]

Respondents renewed their motion to strike the Benedict report, (Respondents' Exhibit No. 35) upon the ground that it is too remote. The motion was denied.

STIPULATION

It is hereby stipulated that the foregoing constitutes a full, true and correct condensed statement in narrative form of all of the testimony in said cause including admissions, concessions and stipulations of counsel, and designations of exhibits, and also is a correct statement of essential motions, rulings, and proceedings of the court prior to submission of the cause, and as such the same may be designated and used as a part of the record in said cause in lieu of the testimony of witnesses in question and answer form and the setting out at length of admissions, concessions and stipulations of counsel and motions, rulings and proceedings covered.

It is further stipulated that the several exhibits offered by the respective parties and received by the court or pertinent parts thereof may be set forth in an Appendix to the foregoing condensed statement either in the same or a separate volume and that page references to said respective exhibits in the said Appendix may be inserted in the foregoing condensed statement at any time either before or after the same shall have been printed as a part of the record.

Dated this 30th day of June, 1939.

C. RAY ROBINSON

HUGH K. LANDRAM

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STEPHEN W. DOWNEY

Attorneys for Merced Irrigation

District, Appellee. [464]

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[Endorsed]: Filed July 13, 1939. [465]

